

# **EXHIBIT**

**B**

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1                   IN THE UNITED STATES DISTRICT COURT  
2                   MIDDLE DISTRICT OF NORTH CAROLINA  
3                   File No. 1:17-CV-00854-UA-LPA

4                   REBECCA KOVALICH AND        )  
5                   Suzanne Nagelski,            )  
6    )  
7                   Plaintiffs,                  )  
8    )  
9                   vs.                            )  
10    )  
11                   Preferred Pain              )  
12                   Management & Spine        )  
13                   Care, P.A., Dr. David      )  
14                   Spivey, individually,      )  
15                   and Sherry Spivey,         )  
16                   individually,                )  
17    )  
18                   Defendants.                 )  
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Videotaped Deposition of REBECCA L. KOVALICH

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Charlotte, North Carolina

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1                   THE VIDEOGRAPHER: Good morning. We are  
2 going on the record. The time on the video monitor is  
3 9:33 a.m. Today is May the 18th, 2018. Please note  
4 that the microphones are sensitive and may pick up  
5 whispering, private conversations and cellular  
6 interference. Please turn off all cellphones or place  
7 them away from the microphones, as they can interfere  
8 with the deposition audio. Audio and video recording  
9 will continue to take place unless all parties agree  
10 to go off the record.

11                   This is media unit number one of the video  
12 recorded deposition of Rebecca Kovalich taken by the  
13 defendant in the matter of Rebecca Kovalich and  
14 Suzanne Nagelski, plaintiffs, versus Preferred Pain  
15 Management & Spine Care, P.A., Dr. David Spivey,  
16 individually and Sherry Spivey, individually,  
17 Defendants, Civil Action Number 1:17-CV-00854-UA-LPA,  
18 in the United States District Court, Middle District  
19 of North Carolina. The deposition is being held at  
20 315 East Worthington Avenue at Charlotte, North  
21 Carolina.

22                   My name is Brad Cartner. I'm the  
23 videographer from Veritext. The court reporter is  
24 Carrie Beam, also for Veritext. I'm not authorized to  
25 administer an oath. I am not related to any party in

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1 A. He lives in Lake Wylie, South Carolina.

2 Q. And did the two of you have any children  
3 together?

4 A. Well, he -- he adopted Suzanne.

5 Q. Other than --

6 A. No.

7 Q. -- Ms. Nagelski? Any other marriages?

8 A. I was married to -- briefly to Darrell C.  
9 Huffman.

10 Q. And when did you get married?

11 A. Around the 1st of April 1966.

12 Q. And when did you get divorced?

13 A. Somewhere around 1970.

14 Q. And did the two of you have any children?

15 A. Well, biologically, we had Suzanne.

16 Q. Was there any other children?

17 A. No.

18 Q. And do you know where Mr. Huffman is  
19 currently living?

20 A. In Winston-Salem.

21 Q. Do you know if he works anywhere?

22 A. I don't know.

23 Q. Any other marriages?

24 A. When I was a teenager, I -- I married. But  
25 my parents jumped in and had it remedied.

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1           A.     No.

2           Q.     Okay.  How long have you known Sherry  
3           Spivey?

4           A.     A long time.  Somewhere in the '60s, when I  
5           was dating her brother.

6           Q.     Is that how you met her?

7           A.     Yes.

8           Q.     And how would you describe your relationship  
9           at that time?

10          A.     We really didn't have one.  She was at  
11          school or doing other things.  We never went in the  
12          same circles.

13          Q.     But you knew who she was; she knew who you  
14          were?

15          A.     Uh-huh, yes.

16          Q.     How long have you known David Spivey?

17          A.     I met him -- they were in California.  Came  
18          in for their parents' 50th anniversary.  And that was  
19          the first time I met him.

20          Q.     Do you remember approximately what year?

21          A.     I can't remember what year.

22          Q.     Do you remember how old Ms. Nagelski was at  
23          the time?

24           THE WITNESS:  I think you were married.

25           She was married.  So early marriage, so it

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1           A.     It's more or less ad hoc. I go to their  
2 meetings and -- and occasionally, barring the  
3 circumstances and whether I'm there, sit with people  
4 who are looking to start a business or they have a  
5 business and they're not doing well. So they come for  
6 free help from the chamber.

7           Q.     I see.

8           A.     It's more or less an advisor with the  
9 chamber.

10          Q.     What kind of involvement have you had with  
11 the North Carolina Medical Group Managers Association?

12          A.     I've been a pretty active member.

13          Q.     And what have you done as a member?

14          A.     Well, attend a lot of their functions over  
15 the years.

16          Q.     Were you ever an officer or anything of that  
17 nature?

18          A.     No.

19          Q.     What about the Winston-Salem Medical Group  
20 Managers? I know you said that you initiated --

21          A.     Uh-huh.

22          Q.     -- the organization. Tell me about that.

23          A.     Well, it's grown to about 50, 60 people,  
24 administrators from medical practices. And we all  
25 started -- we started small, very -- just three people

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1 and then six and then it just added on. So the  
2 president and then we -- vice president, secretary and  
3 treasurer. But -- so we all rotated the -- the  
4 positions.

5 Q. So I take it you've been an officer of that  
6 organization?

7 A. At that time, it wasn't affiliated with the  
8 North Carolina; it was just a very loosely run,  
9 growing group of medical office managers. But I  
10 wasn't really an officer. We just -- by the time we  
11 got to the officers status, to where we were  
12 recognized by the North Carolina Medical Group  
13 Managers, someone else was in the officer positions.  
14 We weren't big enough to even have officers.

15 Q. So you were never an officer in that  
16 organization, even though it sounds like you were  
17 there from the beginning?

18 A. Yes, I was never an officer. Because there  
19 were no such things as officers.

20 Q. Okay. And with the Charleston Chamber of  
21 Commerce, do you have any -- were you ever an officer  
22 or member of committees or anything of that nature?

23 A. No.

24 Q. Okay. Any other churches, organizations or  
25 clubs that you're a member of?

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1 we were all over the place. So I would just grab jobs  
2 as we moved. That was '71 to about '74.

3 And but Philadelphia, I worked at Abington  
4 OB/G as the practice administrator.

5 Q. And how long did you do that?

6 A. Until we moved, I was going to school at  
7 Temple part-time in -- too. We moved back to  
8 Winston-Salem in 1981.

9 Q. And when you moved back to Winston-Salem in  
10 1981, did you start working somewhere?

11 A. Yes. Salem Gastroenterology Associates.

12 Q. And what was your position there?

13 A. The practice administrator.

14 Q. And how long did you hold that position?

15 A. I held that until 19 -- through the end of  
16 1991.

17 Q. So for about ten years you were in that  
18 position?

19 A. Yes.

20 Q. Why did you leave?

21 A. Because I started my own business.

22 Q. And what was that business?

23 A. Triad Clinical Laboratory.

24 Q. And when was that?

25 A. The official opening date was July 1991.

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1           Q.     And tell me a little bit about how you went  
2     about starting your own business.

3           A.     Well, I had experience because, while I was  
4     a practice administrator at Salem Gastroenterology,  
5     the doctors wanted a laboratory where I worked. And  
6     Roesch came in and I suggested we -- we set one up but  
7     let it be a -- when the word got out, other doctors  
8     wanted to do it. So Roesch came in and helped me set  
9     up the first physician office laboratory. And it was  
10    called Salem Laboratory, with 27 physicians.

11          Q.     And it was called Salem Laboratory?

12          A.     Yes.

13          Q.     When did that start?

14          A.     That started in 1984.

15          Q.     So you -- what was your role at Salem  
16     Laboratory?

17          A.     I was managing partner. We were all equal  
18     partners. They put in the money; I put in the sweat  
19     equity. And I became the managing partner of Salem  
20     Laboratory.

21          Q.     And when -- when you say, they put in the  
22     money, who are you talking about?

23          A.     The 27 physicians.

24          Q.     Were you an officer or director of the  
25     company?

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1           A.     I was managing partner. That's what my  
2 title was.

3           Q.     And who was the director of the lab?

4           A.     The director of the lab was Dr. William  
5 Austin.

6           Q.     And do you need to be a physician in order  
7 to be the director of a lab?

8           A.     Yes. Well, the medical director of the lab.  
9 But he -- he was the president, but he was also the  
10 medical director.

11          Q.     So were you working as the managing partner  
12 for Salem Laboratory at the same time you were  
13 practice administrator --

14          A.     Uh-huh.

15          Q.     -- for Salem Gastro?

16          A.     Yes.

17          Q.     Okay. How did that work?

18          A.     Well, they encouraged me. Because the  
19 doctors that I worked for were also partners of this  
20 laboratory. So -- so -- and basically, when it  
21 started, other doctors wanted to come in too, I mean.  
22 So -- and it was good for the physician referrals.  
23 So, yes, I had two jobs.

24          Q.     So why did you leave Salem Gastro and Triad  
25 Clinical?

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1           A.    Well, I left Salem Gastro because the Stark  
2 rule came in, where doctors could not own their own  
3 laboratories and refer to themselves. So I started my  
4 own.

5           Q.    Why did you leave --

6           A.    I sold Salem Gastro; I didn't leave Salem  
7 Gastro.

8           Q.    I'm sorry?

9           A.    I mean, I sold Triad Clinical; I didn't  
10 leave Triad Clinical.

11          Q.    I see. Okay. You said you sold Triad  
12 Clinical?

13          A.    Yes. In 2003.

14          Q.    Let me make sure I got this. So the two  
15 jobs that you had were Salem Gastroenterology's  
16 practice administrator, and then you were the managing  
17 partner of the Salem Laboratory?

18          A.    Yes.

19          Q.    Okay. So when you left Salem Laboratory to  
20 start Triad Clinical --

21          A.    They -- they closed it down. I mean, the --  
22 the government said, you -- in 1991, we had to  
23 dissolve Salem Laboratory because it became a Stark  
24 issue.

25          Q.    Were you given any profits or payout or

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1 buyout or anything at that time?

2 A. Well, we just basically, as sub S, we just  
3 dissolved it and -- and each -- each shareholder had  
4 an equal share.

5 Q. And were you a shareholder?

6 A. Yes.

7 Q. What percentage share were you?

8 A. Well, each had to have equal shares,  
9 everybody had one share.

10 Q. So there were a hundred -- how many  
11 shares --

12 A. 20 -- 27.

13 Q. I see. So you were one of 27 shareholder?

14 A. Yes.

15 Q. And then you started Triad Clinical?

16 A. Yes.

17 Q. Did you have any investors?

18 A. I had a physician that I bought out. That  
19 was Dr. William Austin. And I had three investors  
20 that I bought out.

21 Q. So when you say that you bought these folks  
22 out, did they invest initially in Triad Clinical?

23 A. Yes. Instead of getting a bank loan, they  
24 came and -- and invested their money. It was a very  
25 expensive laboratory. And they invested. And then

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1 time period. And I -- and Dr. Austin about the same  
2 time. I mean, it was profitable but not that  
3 profitable.

4 Q. And what types of things did you do at Triad  
5 Clinical?

6 A. It evolved too. It was clinical chemistry  
7 mainly.

8 Q. And what do you mean by that?

9 A. Well, clinical -- if you go to your doctor,  
10 CBCs. We call it SMA 12s, which everybody has a  
11 different names for, SMA 6s. But just individual  
12 chemistry, when you go to your doctor and have your  
13 blood work, if you look on the sheet, we did it. I  
14 mean, we -- we did the testing. Potassium, low doses,  
15 da, da, da, da, da.

16 Q. Cholesterol --

17 A. Yeah.

18 Q. -- et cetera? Okay. So any lab type  
19 testing. So that's what the lab did. What was your  
20 role at Triad Clinical?

21 A. Well, to start out, I -- lots of hats. But  
22 as it grew, I had -- oh, I had -- did have a med tech  
23 that was -- started out with me. And I lent her the  
24 money to buy in. And then she wanted the money back,  
25 so I bought her out.

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1 Q. Who was that?

2 A. It was Trish -- Patricia Garris.

3 Q. So you said you wore lots of hats. What  
4 kind of things or what kind of duties did you have at  
5 Triad Clinical?

6 A. Everything from the -- from the currier to  
7 the reception to the -- hiring the staff, except Trish  
8 would hire the clinical people and I'd hire the  
9 support staff. And it -- it was incredibly small, but  
10 it grew.

11 Q. At the time that you sold Triad Clinical,  
12 approximately how many employees?

13 A. Over a hundred.

14 Q. Did you ever do any of the lab testing?

15 A. Myself?

16 Q. Uh-huh.

17 A. No. I am not a medical technologist. And  
18 only -- only certified medical technologists were  
19 allowed to do our testing. That was --

20 Q. Is that --

21 A. -- our --

22 Q. -- rule of Triad Clinical or is that --

23 A. That's a rule --

24 Q. -- a legal rule?

25 A. -- of Triad Clinical. Many large

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1 laboratories don't use certified technologists, they  
2 OJT, and are supervised by a certified technologist.

3 Q. So is it your testimony then that it's --  
4 whether the lab is big or small, you have to have a  
5 certified medical technologist, at some point, in the  
6 lab to -- to supervise folks?

7 A. Well, the state had -- had a rule that labs  
8 at least have one medical technologist to sign off on  
9 the nontechnologists' work once every 24 hours. And  
10 Triad Clinical didn't do that; all of our techs were  
11 certified. We didn't have OJTs.

12 Q. I see. And you also had to have a medical  
13 director of the lab that was a licensed physician. Is  
14 that --

15 A. Oh, yes.

16 Q. Who was the medical director of Triad  
17 Clinical?

18 A. Dr. Louis Randall at that time.

19 Q. And did that change at some point?

20 A. Yes. We -- then we had Dr. Shahabi, Shahabi  
21 from Baptist Hospital.

22 Q. Any other medical directors?

23 A. We had another one. And I can't -- I want  
24 to say Dr. Wong, but it wasn't Dr. Wong. Dr. Kim.  
25 And he was the pathologist. We rotated pathologists.

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1      Because pathologists, at that time, and probably  
2      still, are -- can only be a medical director of up to  
3      five labs, at that time. So they -- if they get a  
4      better opportunity, they have to drop one of the labs.

5           Q.      I see. And these medical directors, were  
6      they actual employees of Triad Clinical or were they  
7      1099?

8           A.      They were 1099.

9           Q.      And when you sold Triad Clinical, how much  
10     did you sell that for?

11          A.      I sold the laboratory -- the laboratory was  
12     sold -- did you want the total?

13          Q.      Uh-huh.

14          A.      It was all broken up.

15          Q.      Whatever you remember.

16          A.      Well, in parts. But the whole thing came  
17     to -- depending on whether it was receivables,  
18     whatever, close to \$10 million.

19          Q.      And was that profit to you at that point?

20          A.      Oh, yeah.

21          Q.      Were there any other owners at that time  
22     or --

23          A.      No.

24          Q.      -- were you the sole owner?

25          A.      I was the sole owner.

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1           A.     In March -- and I think it was March 14th,  
2     2016, Dr. Spivey called me on -- I think it was  
3     Saturday. It was Saturday morning. I think it was  
4     the 14th. I have to look at the calendar. And said,  
5     oh, I guess you know I fired Suzanne. And I said to  
6     him, I think that was a very, very mean thing you did.  
7     The way you did it.

8                 You can -- I said, Dr. Spivey, you can fire  
9     anybody you want to. I mean, it's your company. But  
10    the -- the brutal way you did it, for someone that has  
11    helped you grow your practice and done everything that  
12    you've wanted to do and kept your accounting and --  
13    and coordinated all of the vendors and -- and did what  
14    you -- what Suzanne did, for you to let her go by  
15    FedEx letter. I said, at least you could have just  
16    sit down and talked to her and said, Sue, there's no  
17    job for you here or doing bad financially, as he told  
18    me, or whatever. But you two needed -- you don't fire  
19    somebody by FedEx letter. And I told him that.

20                 And then he said, well, my attorney told me  
21    I cannot contact Suzanne now. But I want you to do a  
22    favor. I want you to get ahold of her and tell her I  
23    will pay her whatever she wants if she will drop this  
24    lawsuit. Because Suzanne had gone to Sean and -- with  
25    the lawsuit. And I said, Dr. Spivey, I cannot do that

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1 because I -- this is between you and she. I have no  
2 dog in that fight. I mean, I cannot get in the middle  
3 of this situation.

4                   And I heard in the back Sherry saying,  
5 retaliation, retaliation. And he said, would you  
6 retaliate? Would you hurt my practice? I said,  
7 Dr. Spivey, why would I -- why would I hurt your  
8 practice? He said, I didn't ask you that, Rebecca. I  
9 asked you, will you hurt my practice? And I said,  
10 there is just no way. I told you -- you say it yes or  
11 no and you speak clearly, yes or no, will you hurt my  
12 practice? I said, no.

13                   Well, what's this, a retaliation? I said, I  
14 have no idea. Why would I retaliate? I'm employed.  
15 I mean, I was thinking, why would I retaliate? He  
16 hadn't fired me, you know. But nevertheless, we left  
17 it at that. And -- and it was not a very nice phone  
18 call.

19                   Q.     Is that the only phone call that you had  
20 with him about Ms. Nagelski's separation of  
21 employment?

22                   A.     Yes.

23                   Q.     And that's everything you remember about it?

24                   A.     Yes.

25                   Q.     Okay. And I had asked you why you had

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1       And I said, let me talk to Michael and we can work  
2       this out. And he -- he commented about how good  
3       Michael was, how organized he was. How -- and it was  
4       a -- it was a good situation. And I talked to Michael  
5       about putting the folders in a blue envelope instead  
6       of just going over into a clear one, that can be  
7       overlooked.

8               And, you know, the very few times that I had  
9       any interaction with him, he was very efficient.  
10       And -- and anytime there was a -- a lab situation, to  
11       where something got crossed up, he was right on it,  
12       got it straightened out. I -- I liked working with  
13       him, even though I didn't know him personally or had  
14       really had any real contact with him face-to-face. He  
15       just did a good job, as far as being on top of any  
16       little issue which I was involved.

17       Q.       Gotcha. Okay. What do you know about why

18

19

20

21       A.       I got along with her just fine.

22       Q.       What do you know about why Ms. Nagelski is  
23       no longer there?

24       A.       I do not know. That was between she and  
25       Dr. Spivey.

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1 Q. Did you see the termination letter or --

2 A. She --

3 Q. -- the letter separating her employment?

4 A. She was devastated that he would be the type  
5 of person that, as professional as he can be  
6 otherwise, that he -- and as long as she worked for  
7 him and did for him, that he would fire her in that  
8 callous way. And -- and I related that to Dr. Spivey.

9 Q. Did you see the letter separating her  
10 employment?

11 A. Yes.

12 Q. Okay. When did you see the letter?

13 A. She called me and was absolutely in tears.  
14 And she said, well, I guess I'm gone, or something to  
15 that effect. I said, what? She said, FedEx guy came  
16 and hand me my -- I was fired by the FedEx guy.  
17 And -- and of course, I said -- and I said, well, fax  
18 it over to me, let me look at it.

19 And I will say, I have known this beautiful  
20 personality all my life. And I've never seen her  
21 buckle. And what he did to her and the way he did to  
22 her and what I saw and the way Mrs. Spivey treated her  
23 and played with her mind -- you saw in the email  
24 yesterday, oh, I'm just -- I'm just playing with you,  
25 I just wanted to -- little mind games. She played

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1 strapped and your -- your services are wonderful and  
2 everything, but can we just negotiate on your pricing?  
3 Can -- can you go -- I mean, there was so many things  
4 you could do. You just sit down there and talk to her  
5 and say, would you be interested in -- in doing  
6 some -- some of this that you're doing, but on a  
7 part-time basis because -- and I'm -- I'm kind of  
8 making this up -- but we don't have the financial  
9 stability and -- and -- and -- and we got somebody  
10 else for HR, but you're very good at whatever she --  
11 you know, the other things. Let's -- let's talk. You  
12 don't do it in a FedEx letter.

13 Q. So did you give Ms. Nagelski any  
14 recommendations --

15 A. No.

16 Q. -- as to whether she should --

17 A. No.

18 Q. -- submit her consulting rates?

19 A. No, I did not. She's a grown woman. I did  
20 not. But that's the way she felt, that -- that, if  
21 they were sincere about this, if Dr. Spivey was  
22 sincere about this, he would have sat down with her,  
23 and they could have negotiated right then and there,  
24 not send this.

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1 no longer with PPM?

2 A. I have no idea. She was excellent. She  
3 worked her little self to death. She was a hard  
4 worker and -- and if you went into medical records,  
5 she was pulling -- I mean, she never even stopped to  
6 the chitchat. I mean, she was going.

7 Q. So she worked in medical records?

8 A. Yes.

9 [REDACTED]

10 why she's no longer --

11 A. No, I didn't --

12 Q. -- working --

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 when I was with her, she'd get phone calls and more  
22 work would come down, more work would come down.

23 And then one day, she says, the problem is  
24 is it -- with the old billing service, we never had to  
25 take phone calls. We never had to take bill calls

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1 from patients, you know, fussing about the bill or  
2 wanting to know what this or that. And because the  
3 billing service did now, they're having to take bills.

4 And -- and Susan said, I can't answer the  
5 telephone, post these lab charges, research this,  
6 research that, do this, do that. And -- and -- and  
7 Brandy came through and she said, she just said, I --  
8 you know, I can't keep answering the phone and get  
9 these -- this work upstairs, you know, for the new  
10 patients. I mean, they had her doing everything. And  
11 -- and Brandy just turned to her and said, oh, I just  
12 let it ring. She said, it was a bill call. Brandy  
13 said, eh, just let it ring.

14 Q. And is this Brandy Frey --

15 A. Uh-huh.

16 Q. -- or Brandy Thomas?

17 A. Brandy Frey.

18 Q. Why -- do you know why Katherine Skalronska  
19 is no longer with PPM?

20 A. That was a sad story, but I don't know why.  
21 I don't know. She had -- little Katherine --  
22 Dr. Charles Colbreth, before he retired -- well, he --  
23 he had Katherine Skalronska as his receptionist for  
24 many years. She knew so many people in this  
25 community. And she was a love. And her -- and she

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1           A.     No.

2           Q.     -- at PPM?

3           A.     No.

4           Q.     How did you know that she had all these  
5     relationships with everyone?

6           A.     Because she had been in the community. And  
7     when I talked to her, she -- she knew the right  
8     people. Because working with Dr. Colbreth, she met so  
9     many -- when you work in a physician's office,  
10    especially near -- at the front, you get to know  
11    people in the community. And -- and the staff at  
12    Dr. Spivey's office dearly loved her.

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1           A.     No, she didn't. But she is another  
2 person -- she is one of the successful people that  
3 has -- well, she -- she has another job. She -- after  
4 a -- a period of time, she went to work at an  
5 engineering company. And -- but she called me up and  
6 she gave me the name and -- of the engineering  
7 company. And she said, would you do me a favor? May  
8 I use you as a reference? Because you're well-known  
9 in this town, and very well-respected; because I don't  
10 want to use Dr. Spivey, because he'll trash me like  
11 he's done everybody else. And I said, I'll be more  
12 than happy to.

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1       people and train them and all this stuff. So -- but  
2       -- and again, this -- this with a growing practice,  
3       this evolved very slowly.

4                   So then Lisa came in. And -- and staff  
5       started being hired. And -- and Lisa would call  
6       Suzanne for help. She was very supportive and try to  
7       come in and help Lisa out. I mean, we were all kind  
8       of helping each other. Because what we wanted to do  
9       at that time, all of us wanted to see this practice  
10      succeed.

11               Q.    So how often during the summer of 2007 -- or  
12       how many weeks during the summer of 2007 would you say  
13       that you were helping out, holding the fort?

14               A.    I can't tell you because I can't remember.  
15       But, and I need another date to -- the next time I got  
16       a call, actually, it was from Sherry. I think the  
17       office was running pretty well and I was out of it.  
18       Then -- that Dr. Spivey had somehow, for some reason,  
19       decided that he was going to buy a piece of lab  
20       equipment.

21               And that's all well and good, but you think  
22       he'd call me and say, I'm going to buy some lab  
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1       when you're a tech, you don't have this vision; you've  
2       got this. And -- and -- and to oversee it with  
3       Dr. Spivey's office and then the Greensboro office.  
4       And again, it coordinated to where, when patients came  
5       in, he would have the result is as soon as possible or  
6       he could at least pick up the telephone and say, I  
7       have a patient here I really need to know, you know,  
8       the results of his urine drug test. And he could have  
9       it.

10       Q.       How did you oversee the technologists? What  
11       did you --

12       A.       Because I --

13       Q.       -- mean by that?

14       A.       I oversaw, more or less, the personnel. And  
15       being in a laboratory for so many years, you -- you  
16       know what to look for. But I mean, I did not operate  
17       the machine. But I do know what to look for.

18       Q.       So you were like dealing with scheduling and  
19       personality issues and things of that nature?

20       A.       Yes.

21       Q.       Okay. How many hours a week would you say,  
22       during this time period, you were working in the  
23       Greensboro location?

24       A.       During this -- for a while, I didn't have to  
25       be physically there all the time, but I had to be

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1 available. But at that time, I can't tell you how  
2 many hours I was there. But it was at least 30, 35  
3 hours a week.

4 Q. And this was in the 2013 timeframe?

5 A. Yes.

6 Q. Or whenever the -- the machine --

7 A. Yeah.

8 Q. -- the machine was initially purchased?

9 A. Yeah.

10 Q. We can get records of that?

11 A. Yes.

12 Q. I think you said it was 2012, 2013  
13 timeframe. And so you said you were working 30 to 35  
14 hours per week. And this was in the Greensboro  
15 location, where the lab was located; is that correct?

16 A. That was -- yes.

17 Q. Okay. And how long did that continue? In  
18 other words, how many weeks were you working this 30  
19 to 35 hours per week?

20 A. Well, that's when I had said to Dr. Spivey,  
21 I will oversee this because, again, so many things can  
22 go wrong because you've got so much -- many needed  
23 parts. I'm not going to do it for \$750 a month. I  
24 mean, you can find somebody else. I mean -- but --

25 Q. And so is that when you had the conversation

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10       A.     Are you talking about being physically  
11     present in the laboratory or -- or -- or working to  
12     get all the -- the coordination of the -- just the  
13     whole thing?

14       Q.     Yeah, the whole thing.

15       A.     Over the first six months, it was a good 40  
16     hours.

17       Q.     But not all of that was in the office, it  
18     sounds like?

19       A.     Not all of that was in the office.

20       Q.     Did you keep track of your hours, a log of  
21     your hours or anything?

22       A.     No, I -- no. I mean, at that time --

23       Q.     At any time, did you keep a log of your  
24     hours that you were working?

25       A.     No. No one asked me to. And I had -- one

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1 of the negotiating points for -- for doing this  
2 machine and even the other one with Dr. Spivey is, I  
3 can't be here all the time. I'll get the job done.  
4 You're paying me to get the job done, whether it's 20  
5 hours a week or 80 hours a week, all you want is, get  
6 the job done.

7 Q. Right.

8 A. And I got the job done. So...

9 Q. And when you say you couldn't be there all  
10 the time, was that because you were down in South  
11 Carolina?

12 A. Well, I stayed -- during the critical part,  
13 I stayed up here. And then, as things loosened up, I  
14 would go back -- back down there. But I still stayed  
15 where I didn't have to be hands-on.

16 Q. Uh-huh.

17 A. Anytime I felt like I had to be more  
18 hands-on, I was in Winston-Salem. If I could go and  
19 work for the -- from any other source, because, after  
20 we -- after we purchased that, there came another  
21 laboratory information system. Okay. Now, there  
22 were, at that time, only one or two, Fletcher-Flora  
23 being one, that would even interface with a Shimadzu.  
24 I mean, you -- seems like once you get one -- one  
25 issue working, then there's always another add-on.

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1           Q.     So after the first six months, where you  
2     were working approximately 40 hours per week to get  
3     the LCMS synced up, how many hours were you working  
4     after that first six-month period, when everything was  
5     up and running?

6           A.     20, 30. And I'm just guessing. Because  
7     every week's different. Because at that time,  
8     Gered -- then we had to move the -- one of the  
9     machines, had to move the -- and -- and because the  
10    LCMS was in Greensboro and the little chemistry was in  
11    Winston-Salem. So that's causing a lot of problems.  
12    And so we moved the little -- with Dr. Spivey's  
13    permission, we moved the little analyzer to -- to  
14    Greensboro. And they're -- they -- even now, they're  
15    sitting side-by-side.

16           Q.     Is that analyzer called the IR 500?

17           A.     Yes. Thank you so much. Thank you.

18           Q.     Okay. Okay. So after you got the LCMS up  
19     and running, after that first six months, you said  
20     that, after that time, you were working probably about  
21     20 to 30 hours per week, overseeing the lab and these  
22     two machines. At any point in time, did that 20 to 30  
23     hours per week change?

24           A.     It was -- it was a -- a dynamic situation.  
25     We'd have Dr. Wong to come in. We'd meet with

1 Dr. Wong. He stayed on top of -- made sure that the  
2 machine -- both of them were -- were running  
3 correctly. The LCMS was very difficult because -- I'm  
4 trying to think of layman's terms to -- to -- because  
5 it's very hard to understand. Because it was a  
6 nitrogen, I mean a liquid nitrogen. It -- it wasn't  
7 an analyzer where you just put a little prepaid packet  
8 in there and -- and say -- and say press a button.  
9 But it was all done in kind of logarithms.

10 Q. Okay. All right. So in 2014 -- let's talk  
11 about that timeframe. How many hours would you say  
12 you were working approximately per week?

13 A. 2014. Depending on what I needed to do to  
14 research L -- LIS's to -- and I think the inventory  
15 system was -- was always a headache too, to make sure  
16 that we stocked enough -- we stocked enough and not  
17 overstocked and certain things could be on standing  
18 order, certain things not, to oversee that. And --  
19 and authorize and sign off on every purchase that was  
20 made; my signature was on every purchase that was made  
21 for the supplies.

22 Q. So my question was, during the 2014 time  
23 period, approximately how many hours do you -- would  
24 you say you would work on average?

25 A. 20 to 30.

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1 Q. Okay.

2 A. But as things -- then -- then Gered quit. I  
3 had to go find another chemist. And that took --  
4 so --

5 Q. And was that Rodney that you hired?

6 A. Yes. Yes.

7 Q. Okay. But so it sounds like, at some point,  
8 things kind of got on auto pilot --

9 A. Uh-huh.

10 Q. -- from the standpoint that you had your  
11 policies and your procedures in place and payers had  
12 approved the machine. So all of that paperwork was  
13 done. So you were overseeing the folks in the lab --

14 A. Uh-huh.

15 Q. And dealing with the purchases and the stock  
16 and, you know, whatever day-to-day operational things  
17 might come up that might need your attention; is that  
18 correct? Okay. In 2015, how many hours a week would  
19 you say you were working?

20 A. Well, it got less and less. I would  
21 probably say 20 hours week.

22 Q. And what about 2016?

23 A. I can't -- that -- 2016. Things were  
24 running well. Gretchen, the med tech, would call me  
25 when she had a problem. And I said to her, I will

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1 come in there and I will do what you need for me to  
2 do. All you have to do -- and -- and I checked with  
3 her probably every few days.

4 Q. It sounds like she could handle most things.  
5 By that point, she had been there a number of years?

6 A. Yes. She -- she could. She -- she could.

7 Q. So approximately how many hours do you think  
8 you were working, on average, in 2016?

9 A. That's hard to say. But I'm gonna still say  
10 around the 20 hours. Because there was always  
11 something with that laboratory. And that -- that  
12 Gretchen -- Gretchen's excellent, she is. But people  
13 think that, just because you can run a machine, you  
14 can run a laboratory. That's not so.

15 But it was set up to where that, if there  
16 were no real -- if they was doing  
17 day-to-day-to-day-to-day, 10, 20 hours a week would  
18 have been fine. That's in my opinion, just to be  
19 there when something did go wrong, because Gretchen  
20 could not cover a lot of things. And she said to me,  
21 I can't do what you do. And I said, well, I can't do  
22 what you do either, so there.

23 Q. How -- in 2014, how often would you say you  
24 went to the lab per week?

25 A. In 2014.

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1           Q.     So basically, it's just your memory at this  
2 point?

3           A.     It's basically --

4           Q.     And --

5           A.     And it's going quick.

6           Q.     And it sounds like you don't have a very  
7 good recollection as to how many times you were going  
8 into the lab per week?

9           A.     Well, I tried to be in Winston-Salem at  
10 least two weeks a month. So that was 80 hours. Now,  
11 depending, would I go in there -- sometimes I would  
12 even go into the main office in Winston, and -- and  
13 talk with Dr. Spivey about what he's looking at for  
14 the lab and -- and then -- and then on top of that,  
15 about this time, Dr. Spivey said, I think we need to  
16 do a hormone laboratory. So I worked with Dr. Mark  
17 Scherzo and Dr. Spivey to do his age management.  
18 Fine.

19                   I worked with Dr. Scherzo. And -- and  
20 Dr. Scherzo was giving me different tests. Some -- it  
21 was kind of interesting. He -- Dr. Scherzo and I were  
22 working on a battery of tests for a new piece of  
23 equipment. Dr. Spivey gave me authorization to -- he  
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4                   Get it set up. Decide which test, I  
5 remember Dr. Scherzo and I would -- would talk about  
6 which test we wanted. We'd ask Dr. Spivey. We met  
7 sometime in November in the conference room. Now  
8 how --

9

Q.       November of what year?

10      A.       November -- it was a new -- it was the new  
11 conference room. So it had to be 2014-ish.

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20       that time period, did Medicaid make changes in the  
21 reimbursement rates for the various tests?

22      A.       In what date? What year?

23      Q.       Around the 2015, 2016 timeframe.

24      A.       They changed -- yes. I mean, that's a --  
25       that is not exactly an easy answer -- because so

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1 dynamic. All insurances were changing the way that  
2 they wanted. In fact, they were pretty consistent.  
3 If one wanted this, the other one -- it was pretty  
4 consistent, with a few tweaks. But then every  
5 insurance wanted everything done differently.

6 Q. And so were these Medicare reimbursement  
7 rates, were they going down? For the tests that  
8 Dr. Spivey was performing?

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7       Q.     Ms. Kovalich, did you ever have any issues  
8 with working with Sherry Spivey?

9       A.     I -- yes.

10      Q.     Okay. Can you tell me about those.

11      A.     When Sherry first came into the office, I  
12 would say not the first day, but the first maybe month  
13 or so, I was walking down the hall. And she said, oh,  
14 Rebecca, I would -- anything you need, you come to me.  
15 I'll get you anything you need. I'll go to David and  
16 get whatever you need.

17      Q.     And this was in the 2006, 2007 timeframe  
18 that we're talking about?

19      A.     Well, she -- she was kind of not in the  
20 office and in the office a little bit and not in the  
21 office. And then we had -- we lost a couple nurses  
22 and then she came in the office more. So it -- it was  
23 kind of a little -- kind of a little -- you know, it  
24 kind of built up.

25      Q.     Well, I'm -- I'm just asking about this

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1      incident that you're talking about, when you were  
2      walking down the hall and Sherry Spivey said anything  
3      you need --

4            A.      Yeah.

5            Q.      -- come to me. I'm just trying to figure  
6      out what timeframe we're talking about there.

7            A.      She and Jennifer had that office -- maybe  
8      20 -- we were -- we were still in the old office. So  
9      it had to be 2012, or '13, right in there.

10            MR. HERRMANN: Ann, when we get to a good  
11      spot, do you mind taking a break?

12            MS. SMITH: Sure.

13            THE WITNESS: And -- and I -- I mean, that  
14      was probably the first -- well, let's see. No, it may  
15      not be the first. But -- and I said to her, I said,  
16      Sherry, I don't need an interpreter. I report to him,  
17      always have. I don't need to go to you for you to go  
18      to him to go back to me. I said, I can do that  
19      myself.

20            And -- and it -- now, this is -- it seemed  
21      like -- and for whatever reason, it would have been  
22      okay if we'd known about it. All the -- suddenly, she  
23      was there more and more and took more and more  
24      responsibility or whatever -- for the office. And  
25      started basically -- it seemed to me -- and to a lot

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1 of the staff, but to me, that she was usurping a lot  
2 of managers' jobs.

3 Case in point: We needed a nurse. Well,  
4 she would come in at that time and fill in and help.  
5 And she had really had no role.

6 BY MS. SMITH:

7 Q. Ms. Spivey would come in and --

8 A. Yes. And -- and so Vicky Sweisgood was  
9 there at -- in her office. And we interviewed a girl  
10 named Cathy. And I can't think of her last name.  
11 And -- and she -- she had worked at another doctor's  
12 office that Vicky had known and had glowing  
13 recommendations from that office. And she had quit  
14 for whatever reason. And they said, yes, they would  
15 hire her back and she's great. So, yeah -- so Sherry  
16 comes in and -- and throws a fit because we didn't --  
17 we hired her without her permission.

18 Well, if we'd known we needed her  
19 permission, we wouldn't have hired her. And so  
20 eventually, I remember Dr. Spivey, when the nurse was  
21 working, and he was standing in his office. Said,  
22 yeah, I like her. I --

23 Q. Was that Cathy Stowers you're talking about?

24 A. Red-headed, Cathy --

25 Q. Stowers, Stowers.

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1           A.     I know her first name was Cathy, and it  
2 probably is that lady.

3           Q.     And so this would have been about January  
4 2013?

5           A.     I -- we were still in the old office.  
6 That's how I have to keep my dates. So it probably  
7 was. And but -- it's -- I -- I like to operate on the  
8 clear and direct. And for -- for her to come in and  
9 say -- and have a fit. And Dr. Spivey said the next  
10 day that it was miserable at home, and why, da, da,  
11 da, da, da, da, da. And well -- well, we didn't know  
12 she had made herself clinic manager.

13           Because at that time, Vicky Sweisgood did  
14 the -- did the hiring of the nurses. I mean, she did  
15 the hiring of practically all the staff. And she  
16 helped Dr. Spivey when he hired any doctors or PAs.  
17 She would recruit him and she would get -- I mean --  
18 and -- and suddenly, from us, if someone had made an  
19 announcement, Dr. Spivey made an announcement: Sherry  
20 Spivey is going to start working here, da, da, da.  
21 She'll be here full-time. She's going to run the  
22 clinic. Okay.

23           But without -- from the clear blue, she  
24 throws a fit because we hire a nurse without her okay.  
25 Well, we've been doing it for how many years. And

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1 but -- so it -- it just -- the contentiousness, as I  
2 see it, it was just -- it -- it kept on. It was  
3 almost like she came in, as far as I was concerned, to  
4 torment, harass -- I hate to say harass. That's not a  
5 good term. Just -- basically to take over, without  
6 formally taking over. So nobody in the -- in the  
7 operation at that time knew what's her role. What's  
8 she doing here?

9 She's in a couple hours, and she's gone.  
10 And then she's -- wants to run the show. So again,  
11 it's like she wants to run the office, but on her --  
12 whenever she's ready to run it. And then -- so this  
13 is what bothered me. There was no consistency. It  
14 was just bouncing in, bouncing out, giving a few  
15 orders, taking off. And not being accountable or  
16 follow through what she was supposed to be responsible  
17 for. I mean, outside -- I mean, that would have  
18 happened no matter who, you know, who she was.

19 Q. All right.

20 A. Meaning -- meaning it wasn't her personally;  
21 it was just the way it was done. She just kind of  
22 came in and did what she wanted to and disappeared.  
23 Nobody knows when she's coming again. Then she'd come  
24 in, do what she want to, da, da, da, da, change  
25 this, change that, da, da, da and disappear.

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1 Well, either you're in or you're out. Either you're a  
2 manager or you're not. You know, what is your role?  
3 And that's what bothered me. Because she really  
4 didn't have a role initially; she just -- so...

5 MS. SMITH: Okay. Your attorney has asked  
6 for a break, Ms. Kovalich. We'll go ahead and take a  
7 break now. And I'll have some questions for you after  
8 the break.

9 THE VIDEOGRAPHER: Don't forget your  
10 microphones. The time -- we're going off the record  
11 at 3:16 p.m.

12 (A recess transpired.)

13 THE VIDEOGRAPHER: We're going back on the  
14 record. The time on the video monitoring is 3:37 p.m.  
15 Please continue.

16 BY MS. SMITH:

17 Q. Ms. Kovalich, prior to the break, we were  
18 talking about Ms. Spivey, and if you had any issues  
19 working with Ms. Spivey. And you had relayed this --  
20 this one incident about the hiring of this nurse. And  
21 you said that Ms. Spivey had threw -- thrown a fit at  
22 this point. And I believe this was back in the 2013  
23 timeframe. Maybe I've got that date wrong. Let me  
24 check that. Yeah, 2013 timeframe. Did you have any  
25 other issues with Ms. Spivey?

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1           A.       Oh, yes.

2           Q.       Okay. Can you tell me about those?

3           A.       It was probably around the same time period.

4           Excuse me. Excuse me. There was a meeting and we  
5           were all -- I mean, we were all -- Dr. -- I mean,  
6           Sherry Spivey, Brandy, we were having kind of an  
7           all-purpose little, maybe an office meeting, kind of  
8           coordinating meeting in the conference room. Okay.

9           And --

10          Q.       At the old location?

11          A.       At the old location. I forgot what we were  
12           talking about. But it was just a little business  
13           thing, keep everybody together. And for some instant,  
14           Sherry Spivey jumps up and she starts needle, needle,  
15           needle. And I can't even remember what she said, it  
16           was -- (onomatopoeia). And she -- I mean, it was  
17           like, I'm going to pick a fight with you; I'm gonna  
18           pick a fight with you; I'm going to pick a fight with  
19           you. And so what I did --

20          Q.       And was this, she was trying to pick a fight  
21           with you?

22          A.       Yes. And -- and there was no reason. In  
23           other words, we hadn't had an argument, everything was  
24           fine, we were sitting around, just talking. And --  
25           and -- and she was -- prior to that, she sat on her --

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1       her phone. And she was doing this the whole meeting.  
2       And -- and then, when the meeting was over, she just  
3       approached me and started bitching.

4               And -- and it was that needle, needle,  
5       needle, you know, trying to get a rise out of me, you  
6       know. I'm going to make you jump or do something or  
7       get mad. I don't know. And I just ignored her. I  
8       walked into Vicky Sweisgood's office, picked up my  
9       coat and started down the hall and never made, you  
10      know, eye contact or anything. I just completely  
11      ignored her behavior.

12               And about 15, 20 steps down the hall, where  
13      you have to go out the back door. I hear, fuck you,  
14      Rebecca, kaboom. And I mean the whole wall shook. I  
15      mean, I could not believe what I heard. And then I  
16      was -- I just kept walking. First thing I did when  
17      that happened, I looked at my watch to see the time.  
18      Like, who all is in this building? Who is hearing  
19      this? And it was, I remember, 5:15.

20               So I kept walking at a steady pace. And by  
21      the time I was to the break room, fuck you, Rebecca,  
22      kaboom. And I just -- just walked right on out the  
23      door, got in the car. Now, the next day -- and -- and  
24      Brandy was there.

25               Q.        Let me stop you for just one moment.

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1       Because you said you were having this all-purpose  
2       meeting. And I do want to know who was there. I -- I  
3       think you said that it was you and Ms. Spivey and  
4       Brandy. Was there anyone else?

5           A.       There were other people at the -- at the  
6       meeting. But -- but and that was in the conference  
7       room. And everybody stayed in the conference room  
8       while Sherry was following me out to Vicky Sweisgood's  
9       office, needle, needle, needle.

10          Q.       Was Vicky in her office?

11          A.       Yes, she was sitting in her office. And --

12          Q.       Was Ms. Nagelski present for this meeting?

13          A.       No. And --

14          Q.       Do you remember anyone else present for the  
15       meeting?

16          A.       I -- there were about three or four other  
17       people. But this didn't happen -- I mean, they stayed  
18       in the conference room. We went out, went down the  
19       hall, got my jacket and just politely walked out the  
20       door. Vicky was in her office and everybody seemed to  
21       stay in that conference room. Nobody came out.

22               And so I heard her say it twice, and then I  
23       just kept going out the door. And Vicky said the next  
24       day, she said, I'll tell you, this is the first time  
25       I've seen this wall shake. I've never seen a wall

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1 shake. This building is -- and -- and what prompted  
2 it, it wasn't like we had an argument, got mad, da,  
3 da, da, it was like -- and --

4 Q. So she went off for no reason.

5 A. She definitely went off for no reason.

6 Because we had not had a contentious, everything  
7 was -- you know, we were talking. And the whole time  
8 though, we were -- we were having this meeting, it was  
9 kind of like a end-of-day office meeting, who's on  
10 first or whatever. And I can't even -- I don't even  
11 know what was discussed. She kept on her phone  
12 texting, texting, texting, texting. And -- and it  
13 seemed like that texting was working her up, working  
14 her up, working her up.

15 And so -- and so when the meeting is over,  
16 most of the girls -- all of us girls that I can  
17 remember, still sat there, were talking to each other,  
18 the social talk. And I -- and she starts on me in  
19 front of everybody, and then she follows me to Vicky's  
20 office, still, you know, needling. And I just walked  
21 out the door.

22 Q. And you don't recall what she was needling  
23 you about?

24 A. It -- no, I don't.

25 Q. Was Dr. Spivey present for the meeting?

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1           A.     No.

2           Q.     Any -- and you said this was in the old  
3     building, 2013 timeframe?

4           A.     Uh-huh.

5           Q.     Any other issues that you've had working  
6     with Sherry Spivey?

7           A.     Oh, yeah. And I'm just picking out the --  
8     the ones that stand out the most. I was in Vicky's  
9     office, getting ready to leave one evening.

10          Q.     Do you remember the timeframe?

11          A.     Yes, it was about 5:30-ish.

12          Q.     Year? Do you know what year?

13          A.     It was around the same time as this  
14     happened. So it was, say, 2013-ish.

15          Q.     Okay. In the old building?

16          A.     Yes, in the old building. And my phone  
17     rang. I was in Vicky's office. My cellphone rang.  
18     And I answered. And she just started in on what a  
19     basically worthless person Vicky Sweisgood was. And  
20     Vicky's there. So I put this on speaker, I put it on  
21     the desk. And I said, Sherry, Vicky's here. Okay.  
22     And she starts screaming at Vicky, you don't do your  
23     job. I checked your drawer. You don't do this; you  
24     don't do that. You're just nothing.

25                   I mean, you're just -- oh, I -- it was

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1       horrible. And this went on -- it totally went on  
2       probably -- it seemed like at least 30 minutes of her  
3       on my cellphone on Vicky's desk. And she's screaming  
4       at Vicky. She's not screaming at me. She's screaming  
5       at Vicky.

6               And we had all these problems. And you're  
7       causing all these problems. And you're doing this and  
8       you're doing -- well, it got so bad that I went back  
9       to the back. And Dr. Spivey is in there in his  
10      office. And I said, Dr. Spivey, you need to get this  
11      stopped and you get -- need to get this stopped now.  
12      Either Vicky's going to end up quitting or -- or  
13      something bad is going to happen. Nothing good is  
14      going to come of this.

15              And he's said, what happening? And I'm  
16       saying -- and he said, okay, let's go. So he goes --  
17       he follows me down the hall. And all of a sudden, I  
18       don't hear his footsteps anymore. So I turn around  
19       and he's not there. So I go back into his office and  
20       I said, what -- where'd you go? And he said, I can't  
21       get involved. It's -- it's either -- and he did this  
22       exactly, it's my marriage or my practice; it's my  
23       marriage or my practice.

24              Well, by that time, when I got back to  
25       Vicky's office, the conversation had ended. And she

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1       went into -- I think Dr. Spivey called her afterward.  
2       I got out of there. But -- and then the next day --  
3       the next day, Vicky said Dr. Spivey was very nice and  
4       apologized for Sherry's behavior. And I think Sherry  
5       actually called Vicky back and said, I don't know what  
6       happened. I don't know what happened just...

7           Q.       And how do you know that? Did Vicky  
8       tell you that?

9           A.       Yes. And I think there was an email to --  
10       that tell -- I think Dr. Spivey -- oh, I emailed Vicky  
11       and I said, Dr. Spivey said tonight -- or said to me  
12       today that -- and I can't remember. That it wasn't  
13       you, Vicky, it's her. It's not you, Vicky, it's her.

14               And so -- but Sherry had come back and  
15       talked to Vicky or whatever and -- and apologized. So  
16       but issues like this were just -- it was just  
17       progressing.

18           Q.       So they had gotten worse from 2013?

19           A.       I -- I can't recall any more screaming  
20       outbursts like that. But she was at the office more  
21       and more. Oh, there was --

22               (KOVALICH EXH. 6, text message, KN 00268,  
23       marked for identification.)

24       BY MS. SMITH:

25           Q.       I'm sorry, Ms. Kovalich, let me interrupt

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1 you for just one moment. And we'll come back to that.  
2 Let me show you a document. We'll mark this as  
3 Exhibit Number 6, and ask if you recognize that,  
4 please.

5 A. Oh, yes. I remember that.

6 Q. Is this the -- I think you had called it an  
7 email. But was this the communication --

8 A. The text.

9 Q. -- that you were referring to?

10 A. Yes.

11 Q. And so is this -- the green, is that you,  
12 your message?

13 A. Yes, it is my message.

14 Q. Okay. And you were communicating with  
15 Ms. Sweisgood?

16 A. Yes.

17 Q. And this was July 2013?

18 A. Yes.

19 Q. And you said that Dr. Spivey told him how  
20 miserable his life has been with her --

21 A. Uh-huh.

22 Q. -- it's not anything to do with you; it's  
23 her. I told Sherry when I -- and I'm not sure what  
24 that next thing is supposed to be.

25 A. I don't either. I told Sherry when --

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1 Q. But basically --

2 A. -- if anything --

3 Q. -- if anything --

4 A. -- happened to you --

5 Q. -- happened to you, Vicky, I would never  
6 come back there. So you're telling Vicky that if she  
7 left, you were leaving too?

8 A. Well, yes. Yeah, I can't -- I can't -- I  
9 can't take this unacceptable behavior any more than  
10 Vicky could. I mean, even though that was not -- that  
11 one was not directed at me. Let's see, July 24th.

12 Q. So was this a phone conversation that you  
13 had with Dr. Spivey? Because you -- you say I slammed  
14 the phone.

15 A. I -- and I -- I said if Vicky leaves, I will  
16 leave, and I slammed the phone, yes.

17 Q. Okay. So you were having a phone  
18 conversation with Dr. Spivey?

19 A. Yes.

20 Q. Okay. And so prior to the introduction of  
21 that exhibit, you were -- said you did not recall any  
22 more screaming outbursts from Ms. Spivey?

23 A. I can't recall right now. I'm sure that  
24 something will -- will pop up. But right now -- the  
25 other issue -- and I think it's significant. I'm

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1 trying to pull out the significant ones, meaning the  
2 ones that -- well, the ones that stand out in my mind.

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1       And I said, I think I know who it was. And I said I  
2       think it was -- oh, oh, yes. I know what it was  
3       because he -- she had said Jennifer. So I didn't know  
4       Jennifer ran the lab, you know. Surprise, Jennifer  
5       runs our lab.

6                   So Dr. Spivey was very hot because the  
7       ongoingness of PPM depended a lot on that piece of  
8       equipment. And went back to Sherry's office and  
9       Jennifer's sitting there. And he was angry. And I --  
10      who -- who called? Who -- you know. And -- and  
11      Sherry stepped up and she said, I told Jennifer to  
12      call and represent me, you know, and not to come out,  
13      because it's just too much to pay to have that machine  
14      fixed.

15                Well, with that, Dr. Spivey flew into a  
16      rage. And he said to both Jennifer and he said to  
17      Sherry, stay the fuck out of the laboratory. And then  
18      he went back to his office. And then later he said, I  
19      have never said that to her before in my life. After  
20      that, and what makes this so significant is then the  
21      relationship went straight downhill. I mean, there  
22      wasn't -- after that, it was open warfare she had with  
23      me.

24               Q.     So -- and when you say she, you're talking  
25      about Sherry Spivey?

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1           A.     Yes.  She, in my opinion, she wanted to get  
2     rid of me.  She was going to put -- she had already  
3     really put Jennifer in charge of the laboratory.

4     And --

5           Q.     What timeframe was this?

6           A.     This was 2013.

7           Q.     2013, okay.  Do you recall an incident where  
8     you and Ms. Spivey were talking about Whitney running  
9     the office?  Do you remember a conversation about  
10    Whitney?

11          A.     I remember one.  Well, Whitney running the  
12    office.  She -- if I'm not mistaken, she oversaw the  
13    Greensboro office, not the Winston office.

14          Q.     Right.  Do you recall a conversation with  
15    Mrs. Spivey about Whitney and an argument about that?

16          A.     Well, there was one when -- I'm not sure  
17    it's the same one we're talking about -- where Sherry  
18    Spivey flew into Dr. Spivey and -- and said -- accused  
19    him of ogling Whitney.  And said, all you want to do  
20    is look at those big tits and four-inch heels.

21           And -- and Suzanne was there.  Vicky was  
22    there.  Brandy happened to be standing there.  And  
23    that was when we went down -- went down the hallway.  
24    We got out of there.  She was in such a rage.  We went  
25    down the hall, out the back door.  So --

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1 Q. Do you remember what timeframe that was?

2 A. That was in the evening around, I'm going to

3 guess, 5:30-ish.

4 Q. Do you know what year?

5 A. It -- we were in the old office, we're

6 talking about 2013.

7 Q. Do you recall an incident in 2014 where you

8 had indicated to Ms. Spivey that Brandy was thinking

9 about resigning because of her behavior?

0 A. Brandy never said that to me. She might

1 have said to it to somebody else, but she sure didn't

2 say it to me.

3 Q. Do you remember a conversation or a

4 communication with Ms. Spivey about that?

5 A. I think that it's something that somebody

6 went to Dr. Spivey. Dr. Spivey said that's not so or

7 something. And I remember the email that came -- or

8 text message or what had came through. Either David

9 or you is lying. And I mean that's -- and that's

0 all -- that was the end of it. I mean, I heard -- I

1 mean, that was it. Because --

2 (KOVALICH EXH. 7, email string, 00069,

3 marked for identification.)

4 BY MS. SMITH:

5 Q. Let me you show a document we'll -- which

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1 we'll mark as Exhibit 7. And ask if you recognize  
2 that, please. Is this an email that you were  
3 referring to?

4 A. Yes.

5 Q. And you're saying that you did not tell  
6 Ms. Spivey that Brandy was thinking about resigning  
7 because of Ms. Spivey's behavior?

8 A. I don't recall saying it. I mean --

9 Q. Do you recall saying anything like that?

10           A.       No. I -- Brandy and I never -- that --  
11           that's not a normal -- if Brandy wanted -- quit for  
12           Sherry's behavior, she wouldn't be telling me about  
13           it. She'd maybe tell somebody else. But I wasn't in  
14           her -- she didn't talk with me about things like that.

15 (KOVALICH EXH. 8, email, KN 00015 and 00016  
16 marked for identification.)

17 BY MS. SMITH:

18 Q. Let me show you a document. We'll mark this  
19 as Exhibit 8 and ask you if you recognize this.

20 A. Oh yeah, I remember this one.

21 Q. Okay. Can you tell me what happened with  
22 this?

23           A.     Well, really nothing happened. I didn't --  
24     she was saying I was out in the community, talking  
25     about her, and her -- her family, friends, dogs, cats,

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1        everything. And -- and I said, wait a minute, where  
2        did you get -- I don't think it's this one. I said,  
3        where did you get all that? And she couldn't tell me.  
4        I said, just -- just tell me who said it. And she  
5        couldn't tell me who said it.

6            Q.        And so you -- you denied that you were  
7        saying bad or derogatory things in the community about  
8        Ms. Spivey and Dr. Spivey and PPM?

9            A.        Why would I? I mean, no, I didn't say  
10        anything out in the community about it.

11            Q.        Did you and Ms. Spivey ever discuss this  
12        email?

13            A.        I'm not sure if we discussed it directly or  
14        indirectly. But I remember one -- one incident she --  
15        I kept saying, well, just tell me who said it. I  
16        mean, I'm listening. Who said it? I won't go to them  
17        or anything, but just tell me who said it. And -- oh,  
18        somebody at Salem Gastroenterology. Well, I don't  
19        talk to anybody at Salem Gastroenterology. But she  
20        wouldn't tell me who said it.

21                    And I felt like, if, you know -- I mean, I  
22        didn't say it. But she wouldn't tell me who the  
23        person was that relayed to her that I was talking  
24        about -- about her.

25                    (KOVALICH EXH. 9, email, KN 00034, marked

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1 for identification.)

2 BY MS. SMITH:

3 Q. Okay. Let me show you a document. We'll  
4 mark this as Defendant's Exhibit Number 9 and ask if  
5 you can -- ask if you recognize that.

6 A. Well, I don't know if this is what she's  
7 talking about.

8 Q. No. This is an email that you sent to  
9 Jonathan --

10 A. Yes.

11 Q. Cochran --

12 A. Yes.

13 Q. -- at BB&T; is that correct?

14 A. Yes. But I don't know if there's any  
15 connection with her saying I'm out there. But things  
16 got very -- as you can tell, in the -- in the last  
17 paragraph, it was very difficult, with Sherry's  
18 behavior and -- and what was going on, it --

19 Q. Let me ask you a question: Going back, you  
20 had referenced Jennifer in the lab. And that's  
21 Jennifer Bailey --

22 A. Yes. Yes.

23 Q. -- not Jennifer Spivey --

24 A. No.

25 Q. -- correct?

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1           A.     Jennifer Bailey.

2           Q.     Okay.    Okay.    But Jennifer Bailey was never  
3     put in charge of the lab; is that correct?

4           A.     Well, she was put on as financial manager  
5     and then to as charge of the lab.   I mean, she had a  
6     different title every -- very frequently.   But she was  
7     the one that -- that Sherry put in charge of all this,  
8     you know, you know, dealing with the Shimadzu, dealing  
9     with any financial issues with the laboratory.   I  
10    think she was financial coordinator and -- and --

11          Q.     I mean, Jennifer Bailey didn't have the  
12    credentials to operate any of the machines in the lab  
13    and perform lab testing, did she?

14          A.     She actually -- this is a time we didn't  
15    check out her background, because she was sent over to  
16    us because -- from Carolina Liquid Chemistries.   How  
17    we ended up with Jennifer is Susan Freeny needed to  
18    take vacation.   And this was before Gretchen came in.  
19    And so we needed someone and -- that knew the machine.  
20    So Carolina Liquid Chemistry sent over Jennifer.

21                  And said, well, you know, she worked, you

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1 Greensboro when somebody's out, to fill in. I mean,  
2 this is -- this is basically reception, take patients  
3 back or whatever. Anyway, not having first-hand  
4 information, it seemed -- it did seem like  
5 every position Jennifer was placed, problems resulted.  
6 So and, in fact, Sherry got the basically -- started  
7 utilizing her and -- and they started sharing an  
8 office together. And lo and behold, Sherry found a --  
9 a niche, as she felt, for Jennifer. And -- and that's  
10 how we ended up with Jennifer. I never did -- Vicky,  
11 nobody did background checks or anything or if she  
12 even had an MT degree or whatever. Because she was  
13 loaned to us.

14 Q. Getting back to Exhibit Number 9. Why did  
15 you send this email to Jonathan Cochran?

16 A. Outside of just -- okay. This was -- dated  
17 because I have to go think back, May 2015. As -- as I  
18 said before, after that confrontation with -- with  
19 Sherry, Dr. Spivey had with Sherry, there was --  
20 this -- everything was downhill from then.

21 Q. So this incident where Dr. Spivey told  
22 Mrs. Spivey -- I'm sorry, I forgot the phrase you  
23 used?

24 A. Stay out of the lab.

25 Q. Stay the eff out of the lab. When -- when

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1 Dr. Spivey told Ms. Spivey, stay the eff out of the  
2 lab, that's when -- that's the turning point for  
3 your -- for you?

4 A. In my opinion. In my opinion, at that time,  
5 she just -- when that happened, it was like, you know,  
6 to me, it was like, you're gonna go. I mean, that's  
7 the way I felt with Sherry, you are gonna go. And  
8 so -- and I didn't -- you know, I don't -- I didn't  
9 mind going. And if Dr. Spivey had sat down with me  
10 and said, Rebecca, you know, let's renegotiate or  
11 whatever -- it wasn't me.

12 But the way they were dealing with Suzanne,  
13 it's -- now again, this is my perception, doesn't mean  
14 it's true. My permission is, if I can't get to  
15 Rebecca, I'm gonna go after her, I'm going to go after  
16 the daughter. And that's -- that's the way I --  
17 again, it's perception. But that's the way I felt.  
18 That was --

19 Q. And that you felt the Sherry was coming  
20 after you because of the lab?

21 A. Sherry was coming after me because of other  
22 things too. And I think, for several years -- I liked  
23 working with Dr. Spivey, I respected him. He is one  
24 of the hardest working physicians I've ever been  
25 around. But I think there was a period in his life

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1 that he was -- that he -- I will say, I hate to say  
2 infatuated, but he -- he really liked me. I'll just  
3 say he -- 'cause I can't -- I can't tell you how he  
4 felt. But it was like, I need a friend. I -- I need,  
5 you know, I just -- and he had said --

6 Q. Was this in the fall of 2013?

7 A. Fall of 2013. I can't --

8 (KOVALICH EXH. 10, text messages, KN 0027?

9 Marked for identification.)

10 BY MS. SMITH:

11 Q. Let me show you a document --

12 A. Okay.

13 Q. -- we'll mark --

14 A. Thank you. I can't remember the date.

15 Q. -- as Exhibit 10. Do you recognize this  
16 document, Ms. Kovalich?

17 A. Yeah.

18 Q. And does this refresh your recollection as  
19 to the time period that Dr. Spivey needed a friend, to  
20 use your phrase?

21 A. Yes, he did. And there were other -- there  
22 was -- there were emails. They're -- they're gone  
23 now. But this was a text. And there had been other  
24 texts. And, yes, I appreciated him as a physician. I  
25 respected him as a physician. And he was very,

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1 overall, good to me. But I think he -- now, this  
2 is -- I think he wanted more out of a relationship  
3 than -- than -- as I said to him in an email, you  
4 know, you're -- you're a married man. And -- and  
5 you'd have hell to pay.

6 It was just -- it was just not a doable  
7 thing. And also, too, at that time, with -- with  
8 Suzanne there -- I mean, I was not romantically -- I  
9 liked him and respected him, but he needed more.  
10 And -- and -- and -- and I couldn't do it. I couldn't  
11 do it.

12 Q. So this Exhibit 10 is a text message  
13 exchange between you and Dr. Spivey; is that correct?

14 A. Yes. And there were others.

15 (KOVALICH EXH. 11, text messages, KN 00301,  
16 marked for identification.)

17 BY MS. SMITH:

18 Q. Okay. Let me show you a document which  
19 we'll mark as Exhibit 11, and ask if you recognize  
20 that?

21 A. Yes.

22 Q. This is a text message exchange between you  
23 and Dr. Spivey?

24 A. Yes.

25 Q. In October of 2013?

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1 A. Yes.

(KOVALICH EXH. 12, text messages, KN 00302,  
marked for identification.)

4 BY MS. SMITH:

5 Q. Okay. Let me show a document which we'll  
6 mark as Exhibit 12, and ask if you recognize that.

7           A.     Yes, that was it. As desirable as you  
8 are -- because Dr. Spivey, in my opinion, is an  
9 extremely attractive man. But I just -- I -- I  
10 couldn't -- it just wasn't going to happen. It just  
11 wasn't going to happen.

12 Q. So in your -- so it's your testimony that  
13 you thought that Dr. Spivey was wanting to have an  
14 affair with you?

15           A.     Yes.  And -- yes, I think an affair might be  
16     a -- a light word.  I think he just needed, at that  
17     time, somebody else, whether it was me or anybody  
18     else.  I mean, he -- he needed something that I  
19     couldn't give him.

20 Q. So when you received these text messages, I  
21 mean, do you still have these on your phone?

22 A. I don't know. I don't know -- no, I don't  
23 have this one on the phone. I --

Q. Do you know how you got these documents?

25 A. I thought -- and -- and for some reason, I

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1 thought that I had eliminated them. Because it, to  
2 me, it was a -- you know, what can you say? You're  
3 good to me. I like you. I respect you. You --  
4 you -- but you're a married man and the last thing I  
5 want is to -- to destroy, you know, your relationship  
6 or what relationship you have with your family.

7 Q. And what was your reaction when you got  
8 these text messages from Dr. Spivey?

9 A. Very uncomfortable and very sad.

10 Q. Why were you sad?

11 A. I was sad because, you know, again, this is  
12 my perception, he -- he was so desperate, he was  
13 unhappy. And he had said to me that -- that he --  
14 when he was in California, he tried to leave Sherry  
15 and he found someone that he fell in love with. And  
16 he went to a psychiatrist to help him get away from  
17 her. But the psychiatrist had a -- or  
18 psychologists -- the psychologists had a stroke. And  
19 he felt like that was a omen that he needed to go  
20 back.

21 And so it seemed like he's had this  
22 struggle. And from the way he talked to me -- and he  
23 talked to me early on about a lot of the problems.  
24 It's just been a struggle. And he said to me and to  
25 Vicky Sweisgood and to Anne Thomas during her

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1 Q. Okay.

2 A. I'm sorry, I got them -- my definitions are  
3 horrible.

4 Q. Okay. So do you recall any other  
5 communications in writing between you and Dr. Spivey?

6 A. I can't. We just -- another -- and this was  
7 in March 2014. I've got that -- was that '14 -- I was  
8 at -- in Charleston. And I had four -- five  
9 girlfriends. And we were on the porch. We were at  
10 the -- jumping in and out of the pool, we were having  
11 a good time. And the cellphone rang. And it was him.

12 He said, I got to see you and I'm coming  
13 down. I said, no, you're not. I've got a house full  
14 of girls here and you're not -- you're not going to do  
15 it. And -- and -- and we started talking a little bit  
16 about the office. And I remember, I said, just --  
17 there's some people there, Dr. Spivey, they're just  
18 not pulling their weight, they're not doing anything,  
19 there's no -- no oversight with them, da, da, da, da.  
20 And he said, oh, what you wearing?

21 So and that's why it's sad. Because I  
22 wasn't -- I mean, I am not the person that can do for  
23 him what he needs.

24 Q. Did Dr. Spivey ever have any conversation  
25 with you where he said that the relationship just



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1 you know, mom's, you know, having a -- a fling with  
2 Dr. Spivey. You know, it's -- so that's why I thought  
3 that I had gotten rid of -- of several of them, but  
4 obviously, I didn't. But, no, she did not know till  
5 [REDACTED]

6 Q. And that's when you told her about the text  
7 messages?

8 A. Yes. And I told her why I didn't tell her.  
9 And I just --

10 Q. Did you -- was there anything else you  
11 shared with her about Dr. Spivey, other than the text  
12 messages?

13 A. No.

14 Q. Okay.

15 A. No, absolutely not.

16 Q. And after you told her about the text  
17 messages, did she ask to see them?

18 A. No.

19 Q. Did you show them to her?

20 A. No.

21 Q. Do you know if Ms. Nagelski ever initiated  
22 any sort of investigation related to the text  
23 messages?

24 A. Wait. Who -- who did what?

25 Q. Did Ms. Nagelski ever complete an

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1 investigation relating to the text messages?

2 A. No. No. No.

3 Q. Okay. Is there anything else that happened  
4 with Dr. Spivey?

5 A. Well, October of 2015, it was kind of an  
6 interesting little -- very interesting situation, in  
7 that I had walked into his office during the day,  
8 active, and -- and he was on the phone with Jennifer  
9 Bailey, and they were having a little bit of  
10 a (onomatopoeia), Jennifer Bailey (onomatopoeia).  
11 And -- and he hung up and he was a little -- I was  
12 standing in front of his desk.

13 He was a little bit irritated with Jennifer.  
14 And he said, oh, I apologize for Jennifer. She was a  
15 little pissy today. And I laughed and I said, well,  
16 Dr. Spivey, anybody can be pissy. I can be pissy.  
17 You can be pissy. And then with that, it was like, he  
18 became fixated, stood up, walked around the desk  
19 and -- and the door was open. And he grabbed me up  
20 and he gave me a smooch.

21 And I mean -- my eyes were open. I'm  
22 looking down the hall because it's a highly active  
23 hall. And I'm just waiting for Sherry or Jennifer or  
24 somebody to come down the hall. And that -- that --  
25 it would have been all over. It would have been all

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1 over. And I just said to him, I think I better go.

2 And I walked off. It was very --

3 Q. Do you know what day of the week it was?

4 A. I don't know. I want to say it was the end  
5 of the week. But I can't -- I can't -- I do know it  
6 was October, the leaves were turning. And -- and then  
7 also -- well --

8 Q. Do you remember what time of day it was?

9 A. Actually, it was about one or two o'clock in  
10 the afternoon. I mean, it wasn't at the end of the  
11 day or the beginning of the day. It was a busy time.

12 Q. Did you tell Ms. Nagelski about this  
13 incident?

14 A. No.

15 Q. Any reason why?

16 A. Well, even though I think there's a  
17 assumption that Susan and I talk more than we do, we  
18 don't. She is in Huntersville. I'm in Winston-Salem.  
19 She'll go -- most I've really seen her when we were  
20 working with PPM was when she'd come into the office.  
21 She had her life and -- and she enjoyed her job and  
22 she was very busy. And I was back and forth to  
23 Charleston. So we did not -- I mean, we didn't hang  
24 together.

25 Q. Anything else happen with Dr. Spivey?

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1           A.       Those were the main ones.  And I can't think  
2 of others.

3           Q.       Did Dr. Spivey ever ask you out on a date?

4           A.       No.  We did go -- well, he interviewed a  
5 doctor and I was there, and walked me out to the car.  
6 It was -- it was -- gave me a hug.  But it was not --  
7 but the only date was with -- when we took a doctor to  
8 dinner.  I'll say a date, meaning the only time we  
9 were outside the office together.

10          Q.       Do you remember the name of the doctor?

11          A.       He was -- we were interviewing him.  And we  
12 went to -- oh, we'd go to different places.  One --  
13 here we go, Nobles Grill, Melders.  That's the only  
14 two that -- that I think Dr. Spivey enjoyed going to.

15          Q.       Do you remember the name of the doctor that  
16 you were interviewing when Dr. Spivey gave you this  
17 hug?

18          A.       Well, no.  But I -- I see his face.  He's --  
19 but no.  I don't know why I keep thinking he's from  
20 Texas.  But he was very -- Dr. Spivey liked him and  
21 was hoping that he would be a viable candidate.

22          But --

23          Q.       Do you remember when this was?  The year is  
24 fine.

25          A.       I was standing out in the parking lot at

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1 Nobles but I can't give you the -- the year. I  
2 can't --

3 Q. Was this when you were at the old building  
4 or the new building?

5 A. That -- usually I can always think back, I  
6 could say, okay, were we inside the new building, were  
7 we inside the old building? We were outside. I'm  
8 going to guess it was sometime around 2013 or '14.  
9 But I -- that's only a guess.

10 Q. So the only time that you and Dr. Spivey  
11 went to dinner alone -- or excuse me, went to dinner  
12 was when you were interviewing a doctor; is that  
13 correct?

14 A. Yes. But we only did that -- how many times  
15 did we do that? Two or three times. I mean, it's  
16 like it was an every week thing. I think it was only  
17 a total of two or three times.

18 Q. And was Mrs. Spivey also present for these  
19 dinners?

20 A. She was present for one or two. But there  
21 were two or three times that we went together -- or  
22 met. We didn't drive together. We -- we met at the  
23 restaurant.

24 Q. Did Dr. Spivey ever call you into his  
25 office?

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1           A.     Well, yes, but for business purposes.

2           Q.     And was it ever just the two of you?

3           A.     A lot of times, it was just the two  
4     of us.    But usually the door was open.   I don't recall  
5     a time -- and I -- and I -- I don't recall that I was  
6     ever in his office with the door closed.   The office  
7     door stayed -- his office door stayed open most of the  
8     time.

9           Q.     So the door was open when you were in there?

10          A.     Yes.

11          Q.     Anything else involving Dr. Spivey?

12          A.     That's all that just jumps right out, unless  
13     you have more information.   But that's all that --  
14     that I can recall at this time.

15          Q.     Okay.   Was there ever a time that you were  
16     in doctor's office -- in, excuse me, Dr. Spivey's  
17     office at the old office, laying on the floor, looking  
18     at some plans for the new office?

19          A.     Uh-huh.   Yeah, I remember that.

20          Q.     And you were discussing the plans for the  
21     new office?

22          A.     Yes.   And the floor was the only place you  
23     could roll those things out.   And he was at his desk.  
24     He did not leave his desk.   And I was sitting on the  
25     floor with the -- the plans rolled out.   So he was not

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1 on the floor with me or anything. He was very  
2 professionally sitting behind his desk.

3 Q. Was there a conference room at the old  
4 building?

5 A. Yes. But it was on the other side. I mean,  
6 it was -- it was -- and -- and they usually cut the  
7 lights off too over there on that side. But...

8 Q. Okay. Earlier today, I think you had  
9 started talking with us about a conversation that you  
10 had had with Dr. Spivey after Ms. Nagelski was  
11 separated from employment. Do you recall that?

12 A. Oh, yes.

13 (KOVALICH EXH. 13, email, KN 00039 through  
14 41, marked for identification.)

15 BY MS. SMITH:

16 Q. Okay. Let me show you a document. We'll  
17 mark this as Exhibit Number 13, and ask if you  
18 recognize it. Do you recognize this document, Ms. --

19 A. Yes.

20 Q. -- Kovalich?

21 A. I'm just reading it right along, yes.

22 Q. Okay.

23 A. Yes, I had stated a lot of this earlier.

24 Q. Okay. And did you send this email the same  
25 day of the conversation?

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1           A.     If that is the date I sent it. I'm going to  
2     say that would be in or around the same day. Because  
3     I knew it was -- I was thinking it was the 14th, but  
4     I -- I don't remember speaking of it. And that call  
5     was on the 14th. But I -- this says the 12th.

6           Q.     And it does say Dr. Spivey called me this  
7     morning --

8           A.     Yes.

9           Q.     -- does it not?

10          A.     This may be the same call.

11          Q.     Okay. So earlier, when you testified it was  
12     March 14th, does this refresh your recollection that  
13     it is more likely March the 12th?

14          A.     It's probably March the 12th.

15          Q.     Okay. And does this email accurately  
16     reflect your conversation with Dr. Spivey on that  
17     date?

18          A.     So far, yes. This, yes. Yes.

19          Q.     Okay. And after you sent this email, did  
20     you have a conversation with Ms. Nagelski about the  
21     conversation with Dr. Spivey?

22          A.     I don't recall, but I probably did. I mean,  
23     that would be -- the damage was already done.

24          Q.     What do you mean by that?

25          A.     With -- with Suzanne. As I said earlier, I

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1 had never seen her being so tortured and having all  
2 her hard work -- and she kept Dr. Spivey -- I mean,  
3 she kept those records, she kept everything -- and I  
4 think he just took it for granted that anybody could  
5 do it. And after he fired her, he realized, my God, I  
6 need her. I mean, she did it all. Whoever I hired to  
7 replace her can't do it so, you know.

8 And so -- but the damage was already done.  
9 There was no going back. There was no going back.  
10 And Vicky did say that -- and Stephanie did say that  
11 they were given one-month salary for every year they  
12 were there. Well, it's really easy, because Vicky was  
13 there just two, maybe three years. It was -- but  
14 Suzanne was there almost nine.

15 Q. Did you see the paperwork?

16 A. No, I did not.

17 Q. So you don't know if that's true or not?

18 A. Well, Vicky, I trust very much. As far as  
19 Stephanie, I didn't know her that well. But Vicky, I  
20 would believe.

21 Q. So it's Vicky telling you that this is what  
22 she received and you believed her?

23 A. Yes.

24

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1       she left.

2           Q.     So why could Ms. Nagelski not use Dr. Spivey  
3       as a reference?  What was the belief that he would not  
4       give her a good reference?  What was basis for that,  
5       in that your opinion?

6

7

8       And -- and we didn't know if it was him.  Now -- or if  
9       it was someone like Sherry, Mary Benton or Wendy to  
10      be -- I think Dr. Spivey would have done the right  
11      thing.  But you never know, when you call in for a  
12      reference, who you're going to get.  Because, you  
13      know -- she didn't want to take that chance.  She did  
14      not want to take that chance.  If he had just written  
15      her a nice letter, appreciated her, given her a nice  
16      severance, I don't think there'd be a problem.

17       Q.     Okay.  Earlier, you had said that the folks  
18      had not been trained to give references?

19       A.     I -- I -- I didn't say they hadn't.  I said  
20      obviously someone -- if -- if Brandy or anyone was  
21      telling a potential employer that someone's work  
22      wasn't good enough, I mean, that is a very litigious  
23      situation.  I mean --

24       Q.     I understand.  But you had said that it was  
25      obvious that the folks had not been trained, I

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1 believe.

2       A.     In my perception, it was obvious. Because I  
3 do believe if -- if Dr. Spivey or whomever is  
4 Dr. Spivey's representative, had -- had said -- and  
5 that would have been -- this is something you don't  
6 do. Train the people --

7       Q.     And isn't that the job of human resources,  
8 to take care of references and train folks in giving  
9 references?

10      A.     Well, yes, unless there is something --  
11 there was divided loyalty in the office. There was,  
12 in my opinion, this is what I saw. It doesn't mean  
13 it's true. There was divided loyalty. It was either  
14 her staff or his staff. And if you were his staff,  
15 she had nothing to do with you. If you were -- you  
16 know, you had -- you couldn't serve two masters. He  
17 would say to do something. She would come and say,  
18 don't do it.

19

20 was given out, your daughter, Ms. Nagelski, was in  
21 charge of human resources, correct?

22      A.     Yes, she was.

23            MS. SMITH: Okay. The court reporter only  
24 has about five more minutes, so we'll and go ahead and  
25 take a break right now.

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1                   THE VIDEOGRAPHER: We're going off the  
2 record at 4:43 p.m.

3                   (A recess transpired.)

4                   THE VIDEOGRAPHER: This is the beginning of  
5 media unit number four of the videotaped deposition of  
6 Rebecca Kovalich, May the 18th, 2018. We are on the  
7 record at 5:02 p.m. Please continue.

8 BY MS. SMITH:

9                   Q. Ms. Kovalich, prior to the break, you were  
10 talking about the fact that there was a divided  
11 loyalty and it was either her staff or his staff. Who  
12 was the her and the his that you were referring to?

13                  A. Well, I understand the first part of your  
14 question. What was the last part?

15                  Q. Yes, ma'am. Prior to the break you had  
16 given some testimony. And you said that there was a  
17 divided loyalty and that it was either her staff or  
18 his staff. And I'm just trying to figure out who the  
19 her was. Is that Sherry --

20                  A. Yes.

21                  Q. -- Spivey?

22                  A. Yes.

23                  Q. And the his, was that Dr. Spivey?

24                  A. Yes.

25                  Q. Okay. And we talked about some instances

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1 that you had some issues with Ms. Spivey. Do you  
2 remember any in 2015?

3 A. I don't recall. I -- it may have been, but  
4 the ones most outstanding, I have already articulated  
5 to you. But there probably have been more.

6 Q. Okay. And on -- just to ask the question,  
7 were there any issues that you recall with Sherry  
8 Spivey in 2016?

9 A. I don't recall.

10 Q. And as I said before, if we're going through  
11 the deposition, if you remember something and need to  
12 go back and refresh your -- recharge your answer,  
13 whatever, let me know. Okay? You had talked about  
14 some various incidents with Dr. Spivey. And there in  
15 the complaint, you talk about an incident November  
16 2014. Said that you were in a conference room with  
17 Dr. Spivey and another physician. Do you remember  
18 anything about this?

19 A. What 2014? What date?

20 Q. November 2014.

21 A. Oh, that was with Dr. Scherzo. We were  
22 looking at what test he felt we needed for  
23 Dr. Spivey's age management.

24 Q. And where were you meeting?

25 A. We were meeting in the -- the conference

1 room in the new office.

2 Q. At Maplewood?

3 A. Yes. Oh, yes. There was a -- a small  
4 incident there.

5 Q. And do you remember what time of day this  
6 was?

7 A. This was around six o'clock at night.

8 Q. Were there any folks there, other than you,  
9 Dr. Spivey and Dr. Scherzo? And I can't say his name,  
10 I'm sorry.

11 A. Scherzo. Here's the thing, it's so short,  
12 short-so.

13 Q. Short-so, okay, thank you.

14 A. Not that I know of. It was Dr. Spivey,  
15 Dr. Scherzo and me. And I don't know if anybody else  
16 was in the building or not. You couldn't tell.

17 Q. And was the door to the conference room  
18 open?

19 A. Yes.

20 Q. Tell me what happened? You said there was a  
21 little incident.

22 A. Well, Dr. Scherzo -- that's why we called  
23 him Dr. Mark, took a -- had to take a phone call. And  
24 he went outside the conference room, down the hall to  
25 his office. And Dr. Spivey sat there and said, you

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1 know, I gave you a chance. And he got up, walked out  
2 the door. Just -- I mean, it was very small, but it  
3 was just so like, this is it, you know, this is it.  
4 So I don't know. He said, you know, I gave you a  
5 chance. And that was all he said and he got up and  
6 left.

7 Q. So those were the only words when the two of  
8 you were together?

9 A. Uh-huh.

10 Q. Did you say anything in response?

11 A. No. There was nothing to say.

12 (KOVALICH EXH. 14, Verification, marked for  
13 identification.)

14 BY MS. SMITH:

15 Q. Let me show you a document, Ms. Kovalich.  
16 We'll mark this as Exhibit Number 14. And ask if you  
17 recognize that.

18 A. I had read it. I mean, I -- I know what  
19 this is.

20 Q. And is that your signature?

21 A. Yes, it is.

22 Q. Okay. And is that just an -- and  
23 affirmation that your interrogatory responses are  
24 correct to -- and true, to your knowledge?

25 A. I say, yes, I mean, they're -- I don't know

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1 if there's any little -- little innuendoes. But --  
2 but when I read it, it was pretty cut and dried of  
3 what -- but I need to go back and -- and refresh it  
4 before I say to you, this is absolutely a hundred  
5 percent.

6 Q. But as of the time you submitted your  
7 verification pages, the answers were true, to the best  
8 of your knowledge?

9 A. Yes, I had read it. I had read it, that --  
10 (KOVALICH EXH. 15, email, KN 00044 through  
11 46, marked for identification.)

12 BY MS. SMITH:

13 Q. Let me show you a document. We'll go ahead  
14 and mark this as Exhibit Number 15, and ask if you  
15 recognize that, please? Do you recognize this  
16 document, Ms. Kovalich?

17 A. Okay. This is -- I have to read it because  
18 it's not that I haven't seen, I just -- it doesn't --  
19 it doesn't flash in front me.

20 Q. No, that's fine. Is this an email from Sue  
21 Nagelski to you?

22 A. Well, obviously it's an email from Sue to  
23 me. I have to...

24 Q. And was it dated April 28th, 2017?

25 A. Well, it says so here. So you can't

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1 disagree with that.

2 Q. Do you know --

3 A. Yes, ma'am.

4 Q. Do you know why Ms. Nagelski sent this email  
5 to you at that time?

6 A. Well, one, she had just been --

7 Q. Did you ask Ms. Nagelski to send you this  
8 email?

9 A. No.

10 Q. Do you know if Jennifer Bailey worked for  
11 RJR?

12 A. I never did a background check on her. And  
13 I have no idea where she worked before, except for  
14 Carolina Liquid Chemistries, because she came --

15 Q. So if she wrote software for RJR, you would  
16 not have any reason to dispute that?

17 A. Well, I'd need to -- if I were hiring her, I  
18 would definitely have checked out her -- her  
19 background. And I can't dispute that.

20 Q. Did you ever have any problems with  
21 Ms. Bailey yourself?

22 A. No, I didn't. She -- except when  
23 Dr. Spivey -- well, she -- she never -- she --  
24 Jennifer Bailey never confronted me. She and I had  
25 no -- we gave each other wide birth. I mean, we just

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1 didn't get -- our paths didn't cross that much after  
2 she left the laboratory. And I was very nice to her  
3 when she moved over to work with Sherry at clinical.

4 Q. Did you recommend her for hire in the lab?

5 A. No. Again, Carolina Liquid Chemistries sent  
6 her over to fill in when Sue Freeny was out. And it's  
7 one of those situations that she just stayed. And --  
8 and most of the time, for the first month or whatever  
9 -- I can't give you a timeframe -- she was being  
10 trained by -- by Sue Freeny. And -- and because Sue  
11 was getting ready to go on vacation, she wanted to  
12 make sure that Jennifer knew how to do everything.  
13 And -- and she felt comfortable that she did. And  
14 then, when she went on vacation, she found out -- we  
15 found out -- I found out that Jennifer had trouble  
16 remembering what to do. And it may be I would too if  
17 somebody just trained me.

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23 was told that she could do it. So we needed her.

24 We -- we brought her in. And -- and the rest is

25 history.

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1 with the lab reimbursement reducing, he was cutting  
2 costs?

3 A. Yes. And I couldn't understand later --  
4 well, why didn't he say -- make me an offer, this is  
5 what I thought. Just it's -- it's like in this email,  
6 he was telling me how wonderful I was, how he couldn't  
7 have made it without me, da, da, da, da. And he's  
8 sitting there just telling me that I built his company  
9 and da, da, and all this wonderful thing. And I'm  
10 sitting there while he's saying this, thinking, if I  
11 was saying this to an employee, that employee wouldn't  
12 be fired. I mean why would you fire somebody that --  
13 that you felt this way about?

14 That -- and but he said, oh, I paid you over  
15 a \$100,000. Well, that, yeah, but like, what, that's  
16 like \$10,000 a year? I mean, he felt like he -- he  
17 said it was been -- right here -- I've been more  
18 than -- he, me -- I've been more than adequately  
19 compensated. Well, for what I did, that would be like  
20 \$10 a year -- I mean \$10,000 a year. I was -- and if  
21 you want to research the job market, people who do  
22 what I do, is well over 150, 175, 200,000 to get  
23 something up and going like that. Depending on the  
24 size. And maybe not with Dr. Spivey. But a large  
25 practice or a hospital. And he felt like he -- he had

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1 just done a good, great deal for \$10,000 a year for  
2 the whole time I was there.

3 And yes, he made a lot of money off that  
4 laboratory. And that was all well and good. I didn't  
5 want part of that. I would just like a little -- just  
6 negotiate with me. Say, you could do over -- why  
7 don't you go on retainer, 2- or \$300 a month, make  
8 sure that everything's fine, come visit here once a  
9 month. Just something on that -- and -- and that  
10 really hurt as -- for -- it would have been very  
11 difficult, not impossible, for him to have got to  
12 where he got without the help of someone that had the  
13 competency that I did.

14 And not too many people have -- in fact, at  
15 one time, I was the only woman that was not a doctor  
16 or a med tech that ever owned their own laboratory.  
17 So he -- he had a very -- to me, now of course, I'm  
18 marking myself. But he had the best of the best. And  
19 I made it look so easy, he felt like, eh, anybody can  
20 do that. So it hurt.

21 Q. Ms. Kovalich, so I know you had testified  
22 that, at one point, you were making \$5,000 per month.  
23 I think that was beginning around 2013?

24 A. Yes. And I think he resented paying that to  
25 me because, as we -- we discussed, well, you're kind

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1 of not needed.

2 Q. And then in 2014, I think your compensation  
3 was raised to \$6,000 per month; is that correct?

4 A. Yes, it was. He was doing it as a -- he was  
5 very happy because that year -- and he told me, he  
6 said -- basically he said, I made the most this year.  
7 And I think, from what he said, he compensated other  
8 people too. But that wasn't my business. But he was  
9 very happy that -- that that practice was doing so  
10 well.

11 Q. And as a matter of fact, you were paid well  
12 more than a \$100,000; isn't that correct?

13 A. Well, give or take. I didn't add it up.  
14 What -- if -- to add it up, I think I worked there  
15 three years with -- for nothing. And then \$750 a  
16 month when the first analyzer came in. It's probably  
17 120, 130. But this is over a ten-year period.

18 Q. Well, if you got paid \$5,000 per month for  
19 2013, that's like \$60,000 per year --

20 A. Yes.

21 Q. -- is that correct?

22 A. Uh-huh.

23 Q. Okay. And if got paid \$6,000 per month for  
24 2014, that's \$72,000 per year; is that correct?

25 A. Yes.

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1 Q. And if you got paid 6,000 per month for  
2 2015, that's another \$72,000, correct?

3 A. Well, yes, the addition is correct. But  
4 with that -- I think if -- if Dr. Spivey had -- had --  
5 had communicated a lot to me -- I really didn't buy  
6 that it was financial. But yes, his -- the money was  
7 coming down.

8 Q. So --

9 A. But I --

10 Q. Just those three years, you would have made  
11 close to \$200,000 or more, correct?

12 A. What in -- over -- over a ten-year period.

13 Q. Over -- from 2013, 2014 and 2015, if you add  
14 those up, you would have made --

15 A. Okay.

16 Q. -- around \$200,000 or more for those three  
17 year, correct?

18 A. Yes. But when he gave me -- when he was  
19 giving me the raise, well, all -- everybody the raise,  
20 I didn't want a raise. I mean, really, at that  
21 time -- I mean, I took it; I thought that was great.  
22 But -- and if he had just said, why don't we start  
23 reducing -- would you -- let's look at some options.  
24 Why don't you just work on a, you know, PRN or  
25 let's -- let's do something. We could have -- and but

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1 just to basically -- and he never sat down with me at  
2 anytime prior to that and said, you know, Rebecca, you  
3 know, is there a way that you can cut your -- your  
4 cost -- my cost? My expense is going up, my income is  
5 coming down.

6 Is there anything, you know, we could -- is  
7 there any enhancement or, if there's not, would you  
8 like to go back to your part-time position? You know,  
9 the thing is we just -- we just needed to sit down and  
10 talk, not just walk in the door, oh, I got a note from  
11 him, oh, show up at the lab at two o'clock or one  
12 o'clock or whatever time. And just get swept -- swept  
13 out.

14 That's not the way to do it, unless  
15 you're -- to me, unless you're hostile. You -- you  
16 need to prepare somebody. And then let me have the  
17 option, well, Dr. Spivey, I don't think \$300 a month  
18 to come in here and see that -- you know, fine. There  
19 were so many ways to shake hands and -- and -- and --  
20 and do the right thing. But just throwing me out with  
21 the dishwater, like I felt like he did Suzanne, me  
22 and -- and I perceived he did others, it was just not  
23 the way -- it's not firing.

24 Dr. Spivey -- he can fire anybody he wants  
25 to fire; if he employees them, he can fire them. But

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1       there is a gentle way of doing it, especially a good  
2       employee that has enhanced his income significantly.  
3       A little bit of gratitude. And he did say, oh, I  
4       could do all this stuff. But if he really meant it,  
5       he would have kept me on, even on a -- a limited  
6       basis, just by minimal basis.

7           Because thing is, if something goes wrong,  
8       he could always call me, da, da, da, quiz me. And --  
9       or I want to add this machine, I want to do that. He  
10       could just pick up the phone, say, for a hundred, \$200  
11       a month. But he never thought of that. He just  
12       wanted to get rid of me.

13       Q.     In your complaint, you have brought a claim  
14       for age discrimination. What's the factual basis for  
15       your cause of action that you were discriminated  
16       against on the basis of age?

17       A.     Well, there were -- it was more than one. I  
18       think -- I think the people that were being let go  
19       that had good work -- or no problems in their work  
20       record were over 40. And some of them felt like if --  
21       if they stayed any longer, they would be fully vested  
22       and more difficult to -- more expensive for  
23       Dr. Spivey. I don't know. But I think the office as  
24       a whole were getting rid of over-40 people. Because  
25       they tax the insurance. I mean, they're more

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1       expensive. They're -- they tax the insurance. He has  
2       to pay more for them. Many of them have the -- the --  
3       would be eligible that December for vesting. There  
4       was just -- it was -- it was just better to get rid of  
5       the older people because they're sicker and they're  
6       not as --

7           Q.       And that's just your belief; is that  
8       correct?

9           A.       That's my belief. But -- but insurance  
10       companies, many of them -- and I don't know how this  
11       was set up. The older you are, the more expensive you  
12       are to the company.

13           Q.       Okay. Now you had testified that you  
14       couldn't even remember how many hours you were working  
15       in the office during the 2015 and 2016 timeframe. Is  
16       it safe to say, based on your recollection of the  
17       times that you were in the office, that you would not  
18       have a real good idea as to how these employees were  
19       performing?

20           A.       Oh, no. I -- I didn't have that many  
21       employees, but I knew how they were -- I mean, oh --

22           Q.       I'm not talking about your employees in the  
23       lab; I'm talking about other employees. I mean, the  
24       lab was in Greensboro, correct?

25           A.       Well, yes. The laboratory is in Greensboro.

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1 You're talking about the office as a whole?

2 Q. Yeah, and these other folks that were being  
3 let go were mainly in Winston-Salem; is that correct?

4 A. Yes.

5 Q. Okay. And you would have had limited  
6 interaction with the employees in Winston-Salem; is  
7 that correct?

8 A. Well, many of them had been there a long  
9 time, had been hired, had been there a long time, had  
10 not had any -- well, I said not had any, but very few  
11 if any issues. And --

12 Q. But you weren't there on a day-to-day basis,  
13 to know how folks were performing in the Winston-Salem  
14 office?

15 A. I wasn't there -- at one time, I was there  
16 on a day-to-day-to-day basis. When -- when --

17 Q. I'm talking about 2015, 2016 --

18 A. No.

19 Q. -- timeframe?

20 A. I was not.

21 Q. Okay. So if these folks had performance  
22 problems, it was something that you may or may not  
23 know about, given your --

24 A. Oh, that's true.

25 Q. -- limited travel to the Winston-Salem

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1 office. Okay. And you were mainly concerned about  
2 the employees in the lab; is that correct? Because  
3 that's who you oversaw?

4 A. Oh, yes.

5 Q. Okay. And none of the employees in the lab  
6 were let go, were they?

7 A. Oh, absolutely not.

8 Q. Okay. And Gretchen Hawks is over 40; is she  
9 not?

10 A. She may be. I don't know, right off the top  
11 of my head. But Dr. Spivey is very fortunate to have  
12 her and Rodney.

13 Q. Okay. And I've asked you what the factual  
14 basis was for your claim of age discrimination. And  
15 you said that, basically, it was your belief that it  
16 was better to get rid of the older people. Was there  
17 anything else?

18 A. Well, Dr. Spivey was so concerned about  
19 finances that -- here -- here we go. It was going to  
20 cost him a lot more to keep these people.

21 Q. Do you know if your position has been  
22 filled?

23 A. It's not been filled and it -- yes and no.  
24 It depends on -- on your definition. Dr. Spivey  
25 offered Gretchen my job. And -- and I had talked to

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1       Gretchen because -- and she said Dr. Spivey offered me  
2       your job. And I told him, I cannot do your job, if  
3       you're looking at me to do what you could do. And  
4       that's when I said, well, Gretchen, I couldn't do your  
5       job either, you know, hands-on, so we're -- we're  
6       there. And so, right after I was fired, she was very  
7       scared because she did not know what to expect, she  
8       didn't know if she was next. She didn't know why I  
9       got fired. And I didn't either, except what  
10      Dr. Spivey told me, it was financial. And -- where I  
11      didn't share that with her. I just said, I don't  
12      know.

13           So it -- there was an amount of uncertainty  
14       at that time. But Gretchen did say that Dr. Spivey  
15       gave her a significant raise and for her to take over.  
16       Which she deserves, in my opinion. And to -- to  
17       basically take over as many of my duties as she was  
18       comfortable doing. And again, he's not growing in the  
19       lab, then -- then I can understand it.

20       Q.       In your complaint, you also make a claim for  
21       sex discrimination. What is the factual basis for  
22       your claim of sex discrimination?

23       A.       The claim is, I do -- and that is only my  
24       belief, again, my perception, that Dr. Spivey had to  
25       get rid of me -- maybe for financial reasons. I mean,

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1 the email that caused me to tell him that -- and he's  
2 a very handsome man and he's very -- there's nothing  
3 wrong with Dr. Spivey, except that he's married and I  
4 was not romantically interested in him. And I thought  
5 it was causing a lot of rift in the office with  
6 Sherry. Now, what I perceived is she got wind of it  
7 somehow, whether she read his email or what, and came  
8 in the office with a vengeance. That's my perception.  
9 So it may not be true, but that's my perception.

10 And anybody that had anything to do with me,  
11 Suzanne, Vicky, anybody -- anybody that I hired or was  
12 loyal to me or what -- friends and family all had to  
13 go. I mean, that was my perception. And it may not  
14 be right, but that's what I truly believe and I  
15 believe right now.

16 Q. In paragraph four, you state that you  
17 repeatedly rebuffed Dr. Spivey's --

18 A. Yes.

19 Q. -- advances?

20 A. Yes.

21 Q. Okay. And it -- let's go back,  
22 Ms. Kovalich, to Exhibit Number 12.

23 A. Okay.

24 Q. Okay. So when Dr. Spivey texted you, he  
25 said, at the top, by the way -- or BTW is actually

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1 what he says. Thanks for the, quote, handsome  
2 moniker. Do you recall --

3 A. Yeah.

4 Q. -- calling him handsome?

5 A. Yeah. He called me -- he -- when he'd call  
6 me, he said, he would usually -- on the phone or  
7 something, he'll say, good morning, beautiful. I  
8 said, well, hello Mr. Handsome or Mr. GQ or something  
9 like that. And if -- you know, so that was -- you  
10 know.

11 Q. That was a typical exchange between the two  
12 of you?

13 A. Well, not often. I would say, you look good  
14 today, you got a great tie on. And if -- I was  
15 sincere. I mean, I always said sincere things.  
16 And -- and he would say, oh, you look just beautiful  
17 today. I think you -- you look pretty darn good  
18 yourself. I mean, just little play back and forth.  
19 But -- and this is the way it started. And --

20 Q. You called him Mr. GQ in one of the text  
21 messages --

22 A. Yeah, I know.

23 Q. -- isn't that correct?

24 A. Yes.

25 Q. Okay.

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1           A.     And sometimes he'd come in. When he first  
2     started, he had on green scrubs and looked scruffy.  
3     And then he started wearing suit and tie and he  
4     really -- I mean, he -- he looked very, very, very  
5     handsome.

6           Q.     Paragraph five, you recount an incident in  
7     the winter of 2013, when Ms. Spivey slammed the door.  
8     Is that what --

9           A.     Uh-huh.

10          Q.     -- you had already testified to --

11          A.     Yes.

12          Q.     -- today?

13          A.     Yes, yes.

14          Q.     Okay. You also reference, in paragraph 6,  
15     in May of 2014, he called you when you were in  
16     Charleston and asked what you were wearing?

17          A.     He wanted to come to Charleston. And I  
18     said, I've got a house full of girls. Absolutely not.

19          Q.     And are you sure that that was in 2014?

20          A.     I -- yes. Because -- and I can double-check  
21     this. I was taking pictures of the girls jumping in  
22     and out of the pool. And that was where I pulled the  
23     -- it's the same date.

24          Q.     Okay.

25          A.     And that's how I could say -- be certain

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1 very good organizational skills. And Dr. -- I mean,  
2 Gretchen said Sherry and Mary Benton came out to the  
3 lab -- now this is while I'm supposed to be -- I'm  
4 still working, have no idea that they're getting ready  
5 to fire me. Come out there. And Sherry hands  
6 Gretchen her card. And said, from now on, you start  
7 calling me if you have a problem. And --

8 Q. And who said that? Sherry said that?

9 A. Yes.

10 Q. Okay.

11 A. And she had Mary Benton. And Gretchen told  
12 me later that she said, I -- I -- after you left, I  
13 chose to stay on one condition. I told Dr. Spivey the  
14 condition: I never have to deal with Sherry or Mary  
15 Benton. I will only deal with you. I will not have  
16 them come in here and tell me what to do, what not to  
17 do, as my boss. And Dr. Spivey agreed, which is the  
18 right way to do it, if he wants to keep the lab going.

19 Q. In 2014, you said that Ms. Spivey brought in  
20 another employee and gave her my -- my tasks. Okay.  
21 And was that Mary Benton --

22 A. Yes.

23 Q. -- in 2014?

24 A. Yes.

25 Q. Okay. And what tasks of yours did Mary

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1 Q. Okay.

2 A. But he felt like -- well, I know, he felt  
3 like he was going to be saving a lot of money doing it  
4 himself.

5 Q. Paragraph nine, you said that, in February  
6 2015, you were walking to your car, Dr. Spivey pulled  
7 up in his car, he got out, he grabbed me, picked me up  
8 and spun me around in circles?

9 A. Yes. He had just gotten out of rehab for a  
10 couple week. And I was walking to my car. It was  
11 during the day. And he was so happy to see me --  
12 which was -- and -- and he started -- he got out of  
13 his car, he started laughing. And he just picked me  
14 up and started swinging me around the parking lot. I  
15 mean, it was nothing romantic or sexual, it was  
16 just -- it was just fun. But I was very apprehensive  
17 about somebody walking out the door and  
18 misinterpreting that little -- that little swing.

19 Q. Okay. And then you say, in October 2015,  
20 that you walked into Dr. Spivey's office to ask him a  
21 question. He was on the intercom. He looked at you  
22 said, she's pissy today. And who was that -- I think  
23 you testified this --

24 A. Yes.

25 Q. -- earlier --

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1           A.     Yes.

2           Q.     -- is that in reference --

3           A.     That was Jennifer. He was having a few  
4     words with Jennifer. And he -- I mean it wasn't hot  
5     or anything. But he apologized for her because I  
6     could hear her on the speaker phone, and she was  
7     pretty short with him. And he said, well, she just --  
8     she's -- you know, excuse her, Rebecca, she's just  
9     pissy today. So, yes, that was Jennifer Bailey.

10          Q.     And then Dr. Spivey, according to your EEOC  
11     charge, he grabbed you and kissed you?

12          A.     Oh, yes. At that -- oh, absolutely, at that  
13     time.

14          Q.     Did you report this to Sue Nagelski?

15          A.     No, I mean, kind of -- why -- why?

16          Q.     Did you consider that you were being  
17     sexually harassed?

18          A.     Well, who do I report it to? What was  
19     Suzanne going to do? She was getting ready to get  
20     fired. I mean, what was -- I mean, what could she do,  
21     go to Dr. Spivey and say, keep your hands off my mom.  
22     I mean, what could she do?

23          Q.     That was not the question. The question  
24     was: Did you consider that you were being sexually  
25     harassed?

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1           A.     I felt like I was -- I hate to use the word  
2 harass because Dr. Spivey never grabbed me up, threw  
3 me in the closet or -- or anything. But it was  
4 sexually -- it was uncomfortable, unprofessional and  
5 it put me a -- a bad situation, knowing that Lisa and  
6 Suzanne were working in that office. And it -- it was  
7 just not a good thing. But -- but who do I report it  
8 to? I mean, the -- the chart -- organizational chart,  
9 I report directly to Dr. Spivey, everything I do, I  
10 report direct to Dr. Spivey. And...

11           Q.     So you did not report it to human resources?

12           A.     No.

13           Q.     Did you tell anyone about that?

14           A.     I -- I can't recall. I think I was so  
15 stunned -- I can't recall. I can't recall if I said  
16 anything to -- I wouldn't -- I don't think I would  
17 have said it to anybody. I wouldn't say -- if I was  
18 going to say it to somebody, I would have told  
19 Suzanne. But there was no purpose at that time.

20           Q.     Did you tell Vicky?

21           A.     I don't know.

22           Q.     Where did Dr. Spivey kiss you?

23           A.     On the lips.

24           Q.     And it was just one kiss?

25           A.     Yes..



David

Salem this afternoon.  
I'm not freaked out, I  
think our situation  
differs from this one.

But I think we might  
want to make sure.

Oct 22, 2013, 7:57 PM

Rebecca my beauty,

I never heard back from  
you today about the  
Jered situation.

Sorry I couldn't talk  
more today but things  
were hectic in  
Greensboro.



Text Message



Thursday, October 24, 2013

Rebecca Kovalich

Jered has results you need Left it on Vicki voicemail. But  
She is in meeting

1:04 PM

David Spivey, MD

Object of my desire,

I am texting you rather than calling Jared because of your  
request that lab problems be routed through you.

I tried to reach Jared today unsuccessfully both by land  
line (1406) and cell phone.

6:09 PM

This is unacceptable.

Where are you?

Rebecca Kovalich

Briefly in IOP. Didn't u get my message that he sent the  
results? The nitrogen generator makes a lot of noise. I  
will go to GSO as soon as I return and but a Cow Bell on  
his phone.

6:27 PM



# **Kovalich Dep. Ex. 12**

## **Text Messages**

**FILED UNDER**

**SEAL**

**Kovalich Dep. Ex. 13  
03/12/2016 Email  
from Kovalich**

**FILED UNDER  
SEAL**

**Kovalich Dep. Ex. 17**

**FILED UNDER  
SEAL**

## CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):  
 FEPA  
 EEOC

and EEOC

Name (Indicate Mr., Ms., Mrs.,  
**Ms. Rebecca Kovalich**

State or local Agency, if any

Home Phone (Ind. Area Code)  
**(336) 817-3999**

Date of Birth  
**1944**

Street Address  
**141 Mayfield Road**

City, State and Zip Code  
**Winston-Salem, NC 27104**

Named is the Employer, Labor Organization or Employment Agency, Apprenticeship Committee, or State or Local Government Agency that I believe discriminated against me or others. (If more than two, list under PARTICULARS below.)

Name  
**Preferred Pain Management & Spine Care, P.A.**

No. Employees, Members  
**20+**

Phone No. (Indicate Area Code)  
**336-760-0706**

Street Address  
**2912 Maplewood Avenue**

City, State and Zip Code  
**Winston-Salem, NC 27103**

Name

No. Employees, Members

Phone No. (Indicate Area Code)

Street Address

City, State and Zip Code

## DISCRIMINATION BASED ON (Check appropriate box(es).)

RACE  COLOR  SEX  RELIGION  NATIONAL ORIGIN  
 RETALIATION  AGE  DISABILITY  GENETIC INFORMATION  
 OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE  
 Dates:

**2013 June 9, 2016**

CONCLUDING ACTION

THE PARTICULARS ARE ON additional paper(s) enclosed, attach extra sheet(s).

See Attached.



I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

*12/1/18  
 R. Rebecca Kovalich*

Date

Charging Party Signature

NOTARY When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.  
 SIGNATURE OF COMPLAINANT

SWORN AND SIGNED TO BEFORE ME THIS DATE  
 (month, day, year)

KN 0772

**Rebecca Kovalich v. Preferred Pain Management & Spine Care, P.A.**

**EOC Charge Attachment**

1. In or around 2013, the Company hired me to be a Lab Administrator at the Charlis Boulevard location in Winston-Salem, North Carolina. Prior to that, I had done regular contract work with the Company for many years. By all accounts, I was a terrific employee and never received any sort of written or verbal discipline during my time with the Company.
2. Starting in 2006 or 2007, while I was doing contract work for Dr. Spivey, my boss, he began regularly hugging me. He would make innuendos, and engage in other behavior that would qualify as inappropriate, but I did my best to ignore it.
3. However, in 2013 and 2014, Dr. Spivey's sexual harassment accelerated. Dr. Spivey began emailing me what were, essentially, love letters.
4. I repeatedly rebuffed these advances.
5. In the winter of 2013, Mrs. Spivey—Dr. Spivey's wife who also worked for the Company—berated me in a conference room in front of other employees. As I tried to leave, she repeatedly slammed the door and yelled, "Fuck you, Rebecca!"
6. In May 2014, Dr. Spivey called me while I was in Charleston, South Carolina. He told me that he was coming to Charleston and said that he had to see me. I told him "no." On this same call, he interrupted me and said, "What are you wearing?"
7. In November 2014, I was in a conference room with Dr. Spivey and another doctor. The other doctor left the room to take a phone call, and Dr. Spivey looked at me and said, "You know, Rebecca, I gave you a chance." He then stood up and walked out of the room.
8. In 2014, Mrs. Spivey began blatantly targeting me. For example, she brought in another employee and gave her my tasks. Then, Mrs. Spivey took charge of the lab, which I had previously controlled. I was also responsible for lab billing coordination with the billing service Physician Directions, and they took that away from me in February 2015. Ultimately, I ended up doing that job again because no one else could do it.
9. In February 2015, I was walking to my car in the parking lot. Dr. Spivey pulled up in his car. He got out, grabbed me, picked me up, and swung me around in circles.
10. In October 2015, I walked into Dr. Spivey's office to ask him a question. He was on the intercom. I was standing in front of his desk. Then, he disconnected the call, came around the desk, looked at me and said, "Excuse her; she's pissy today." I said, "Dr. Spivey, everybody can be pissy." All of a sudden, he snapped, looked at me intensely, grabbed me, pulled me

close, and started kissing me. His door was open and I was facing his door, scared to death that somebody would see what was happening. I froze. Then, I looked at him and said, "I think I need to leave."

11. In March 2016, Dr. Spivey called me and told me that my daughter, Sue Nagelski, was being let go. I told him that it was between him and Sue. She retained counsel and was alleging that her termination violated the ADEA, Title VII, and other various employment statutes.
12. He then said, "My attorney told me not to approach Sue; would you please see what you can do to get her to drop it?" He said, "Tell her that I will give her whatever she wants as long as she drops it." I told him that I did not want to get involved. I also told him that I thought he was very cruel in how he handled Sue's case.
13. He wouldn't drop it. He stated that I could alleged that he was retaliating against me because Sue was threatening to file a Charge. I again told him that it was between him and Sue. However, his odd statement turned out to be a self-fulfilling prophecy.
14. On May 27, 2016, Sue filed a Charge of Discrimination with the EEOC (Charge No.: 430-20156-01529). Dr. Spivey quickly retaliated against me for this.
15. On June 9, 2016, the Company terminated my employment. At that time I was 71 years old.
16. I was replaced by a significantly younger employee.
17. I perceived, and still perceive, a Company pattern and practice of terminating employees in my protected class, namely employees over 40 years old.
18. Accordingly, I believe that the Company terminated me because of my age in violation of the Age Discrimination in Employment Act. I also believe that the Company violated Title VII of the Civil Rights Act by (1) retaliating against and terminating me for engaging in protected activity (declining Dr. Spivey's sexual advances), (2) retaliating against and terminating me in retaliation for opposing discrimination against Sue (also an ADEA violation), (3) retaliating against and terminating me in retaliation for Sue engaging in protected activity (also an ADEA violation), and (4) subjecting me to unlawful sexual harassment.